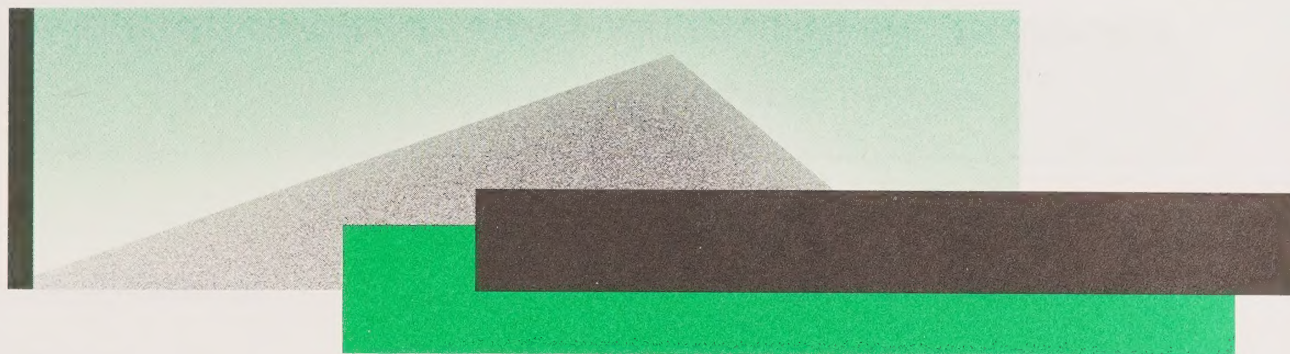


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NAFTA Customs Procedures Manual

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We welcome your comments on this manual.

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NAFTA Customs Procedures Manual

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Introduction

If you have a question on NAFTA procedures, you may not know where to begin looking for the answer. The volume of material can be overwhelming. This manual is aimed at the importer, exporter, or producer who has some knowledge of basic procedures for importing commercial goods into a country, but who has questions on specific NAFTA procedures. This manual does not cover subjects exhaustively and, when specific problems occur in practice, it will often be necessary to refer to the laws, regulations, and decisions of the country and to obtain assistance from the appropriate customs administration. Therefore, the manual is not a legal document. We hope, however, that it will serve as a general educational and reference tool.

The provisions stated in NAFTA are, for the most part, the same for Canada, Mexico, and the United States. However, since each country has its own customs administration, this manual is divided into a section for each country. You can refer to the section on the country into which you are importing goods.

The following is a summary of the material in each chapter:

- | | |
|------------|---|
| Chapter 1: | Procedures for completing the <i>Certificate of Origin</i> , which supports a claim for NAFTA preferential tariff treatment |
| Chapter 2: | Marking requirements |
| Chapter 3: | Procedures for requesting binding rulings on goods being imported into a NAFTA country |
| Chapter 4: | Changes to entry procedures as a result of NAFTA |
| Chapter 5: | Procedures for making post-importation claims and corrections |
| Chapter 6: | Customs procedures for verifying whether goods qualify as originating, as certified by the <i>Certificate of Origin</i> |
| Chapter 7: | Procedures for filing an appeal |
| Chapter 8: | Procedures for filing drawback and applying for duty deferrals |
| Chapter 9: | Procedures for seeking temporary entry of specific goods |

- Chapter 10: Conditions under which goods can be imported duty-free after having been exported from Canada
- Chapter 11: Information on commercial samples of negligible value, printed advertising material, confidentiality, and keeping books and records

This manual was assembled in March 1995 and, unless otherwise indicated, is based on information available at that time. Since policy and procedures can change, updates will be issued as required. You will find the date each page was issued on the bottom left-hand corner of the page. Those who are on customs mailing lists will be sent the updates.

Chapter 1: Certification

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Chapter 1: Certification

1. Introduction

Only after the exporters have properly determined the origin of the goods can they provide a NAFTA *Certificate of Origin* to the Canadian importer. Without the *Certificate of Origin*, the importer does not have enough information to prove that the goods are entitled to preferential duty rates. Therefore, the certificate is a tool the exporter uses to tell the importer that the goods qualify for NAFTA duty rates, and which one of the three possible NAFTA duty rates the goods are entitled to receive. Revenue Canada also uses the certificate to verify whether importers have claimed the proper duty rate.

Articles 501 to 504 of NAFTA outline the obligations regarding *Certificates of Origin*. For details on the Canadian legislation that makes the *Certificate of Origin* a condition of receiving preferential tariff treatment, see the *Customs Tariff*, paragraph 25.2(5.1)(a), the *Customs Act*, section 35.1, and the *Proof of Origin of Imported Goods Regulations*.

2. Purpose

This chapter describes the certification requirements, and explains how to complete the *Certificate of Origin*.

3. Persons affected

3.1 Importers

All importers must have a properly completed *Certificate of Origin* in their possession when they claim one of the NAFTA preferential tariff treatments. Importers do not have to give the *Certificate of Origin* to Revenue Canada unless they are asked to do so, but importers must have it when they claim a NAFTA duty rate. If the exporter has already given the certificate to the importer by the time the goods are accounted for with Revenue Canada, importers can claim a NAFTA preferential rate at that time. If importers do not yet possess the certificate at the time of accounting, they must pay the duty at the rate established by the most-favoured-nation (MFN) tariff. Importers then have up to one year to obtain a valid *Certificate of Origin* and claim a refund.

3.2 Exporters

It is the exporter's responsibility to determine the origin of the goods under the NAFTA rules of origin, complete the *Certificate of Origin*, and send a copy of it to the importer. Exporters cannot certify goods that do not satisfy the NAFTA rules of origin on a NAFTA *Certificate of Origin*. Exporters or producers should not sign a *Certificate of Origin* if:

- they have determined that the goods do **not** qualify for a NAFTA tariff preference;
- they have not applied the NAFTA rules of origin to the goods; or
- they cannot substantiate that the goods satisfy the NAFTA rules of origin.

In cases when the exporter of the goods to Canada is not the producer of the goods, the exporter must either:

- obtain sufficient information from the producer to determine the origin of the goods;
- obtain a properly completed *Certificate of Origin* from the producer; or
- be able to somehow substantiate that the goods satisfy the NAFTA rules of origin.

It is important to note that, when the producer provides a *Certificate of Origin* to the exporter, the exporter is still responsible for completing a certificate to cover the exported goods for the importer.

3.3 Producers of goods

A producer who voluntarily completes a *Certificate of Origin* for an exporter is subject to the same obligations as an exporter who completes a certificate.

4. General

4.1 Copies required

Exporters must keep copies of the certificate for their records and provide a copy to the importers. Exporters should keep the original.

When a producer completes and signs a certificate for an exporter, both the producer and the exporter must keep a copy for their records.

For goods imported into Canada, if Revenue Canada wants to see the *Certificate of Origin*, the Department will ask the Canadian importer to present a copy. For the same shipment of goods, if United States or Mexican customs wants to see the certificate, they will ask the exporter in their country to present a copy.

4.2 Computer or other type of form

Computer-generated or privately printed forms are acceptable, as long as the form contains the required information and is in a format consistent with Revenue Canada's form.

The Origin Determination Directorate, Trade Administration Branch, at Revenue Canada must approve any other medium or format.

4.3 Language

For goods imported into Canada, the *Certificate of Origin* can be completed in English, French, or Spanish. When the certificate has been completed in Spanish, Revenue Canada may ask the importer to have the certificate translated.

4.4 Retention period

Importers in Canada must keep the *Certificate of Origin* and any other records relating to the goods covered by the certificate for a minimum of six years.

Producers and exporters in the U.S. or Mexico who complete *Certificates of Origin* for shipments to Canada must keep copies of the certificates and all records used to determine the origin of the goods covered by the certificate for a minimum of five years. The retention period begins the day the certificate is signed. Canadian producers and exporters who complete *Certificates of Origin* for shipments to the U.S. or Mexico must keep a copy of the certificate and all records used to determine the origin of the goods covered by the certificate for a minimum of six years.

4.5 Length of validity

Although a *Certificate of Origin* can only cover goods imported over a 12-month period, the certificate remains valid for NAFTA preference claims made up to four years from the date on which it was signed.¹

Example

If goods are covered by a *Certificate of Origin* signed on May 1, 1995, and are imported into a Canadian bonded warehouse, no tariff treatment would have to be claimed until the goods are taken out of the warehouse. As long as the NAFTA tariff preference is claimed by April 30, 1999, the certificate signed on May 1, 1995, is acceptable.

If a claim for NAFTA treatment is made after the certificate is four years old, the certificate is no longer valid. Before the goods can receive NAFTA tariff treatment, the importer would have to obtain a new certificate from the exporter.

4.6 Refund or corrections

When a claim for NAFTA preferential tariff treatment is not made at the time of accounting, importers can request preferential tariff treatment up to one year after the date on which the accounting for the goods was made.² They will need a *Certificate of Origin*.

As well, exporters or producers who complete a certificate must notify all parties to whom they gave the certificate of any change that could affect its accuracy or validity. Please note that exporters who provide information on a *Certificate of Origin* that is untrue or cannot be substantiated may be subject to penalties.

Importers must submit a corrected declaration and pay the corresponding duties whenever there is reason to believe that the certificate contained inaccurate information.

5. Commercial goods under CAN\$1,600

When goods are worth less than CAN\$1,600, Revenue Canada does not require a *Certificate of Origin* for goods to receive NAFTA treatment. Instead, informal certification can be used to certify that the commercial goods originate in a NAFTA territory. **This does not mean in any way that the goods do not have to satisfy the NAFTA rules of origin.** It only means that there is a simpler form that can be used to certify the origin of the goods.

The following statement of certification can be used:

<p>I certify that the goods referred to in this invoice/sales contract originate under the rules of origin specified for these goods in the North American Free Trade Agreement (NAFTA), and that further production or any other operation outside the territory of the parties has not occurred after the goods were produced in the territories.</p>	
Name:	_____
Title:	_____
Company:	_____
Exporter:	_____ Producer: _____ of the certified goods. (Check one)
Telephone:	_____ Fax: _____
Country of origin	
United States:	Mexico: _____ Mexico and the United States: _____ (Check one)
(For the purposes of determining the applicable preferential rate of duty as set out in Annex 302.2, according to the marking rules or each party's schedule of tariff elimination.)	
Signature:	Date: _____

This statement can be either attached to the invoice, or printed, stamped, or typed on the invoice. If goods that would usually be part of a single commercial transaction are broken into a series of importations with the intent of making the value of each importation less than \$1,600, the preceding informal statement of origin cannot be used. The origin of such goods must be certified on the regular NAFTA *Certificate of Origin*.

6. Casual goods

When casual³ goods are purchased in the U.S. or Mexico and imported into Canada, the importer does not need a *Certificate of Origin* to take advantage of the NAFTA preferential tariffs. The tariff treatment is determined by looking at any country-of-origin marking on the goods. Casual goods purchased in either the U.S. or Mexico will receive the U.S. tariff treatment if the country-of-origin marking is the U.S., or the Mexico tariff treatment if the country-of-origin marking is Mexico.

Marking and labelling laws in the U.S. and Mexico do not require goods that are produced domestically to be marked with the country of origin. Therefore, if the country of origin is not marked on goods purchased in the U.S. or Mexico (and there is no other evidence that the goods are not from that country), they will generally receive the NAFTA treatment that applies to the country in which they were purchased.

7. How to complete Form B232E



Revenue Canada
Customs, Excise and Taxation

Revenu Canada
Accise, Douanes et Impôt

PROTECTED (when completed)

North American Free Trade Agreement CERTIFICATE OF ORIGIN (Instructions Attached)

Please Print or Type

1 Exporter's Name and Address <div style="border: 1px solid black; width: 100px; float: right; margin-top: -20px; padding: 2px;">Tax Identification Number ▶</div>	2 Blanket Period <div style="text-align: center; margin-top: 20px;"> From <table style="display: inline-table; border-collapse: collapse;"><tr><td style="border: 1px solid black; width: 20px; text-align: center;">D</td><td style="border: 1px solid black; width: 20px; text-align: center;">D</td><td style="border: 1px solid black; width: 20px; text-align: center;">M</td><td style="border: 1px solid black; width: 20px; text-align: center;">M</td><td style="border: 1px solid black; width: 20px; text-align: center;">Y</td><td style="border: 1px solid black; width: 20px; text-align: center;">Y</td></tr></table> To <table style="display: inline-table; border-collapse: collapse;"><tr><td style="border: 1px solid black; width: 20px; text-align: center;">D</td><td style="border: 1px solid black; width: 20px; text-align: center;">D</td><td style="border: 1px solid black; width: 20px; text-align: center;">M</td><td style="border: 1px solid black; width: 20px; text-align: center;">M</td><td style="border: 1px solid black; width: 20px; text-align: center;">Y</td><td style="border: 1px solid black; width: 20px; text-align: center;">Y</td></tr></table> </div>	D	D	M	M	Y	Y	D	D	M	M	Y	Y
D	D	M	M	Y	Y								
D	D	M	M	Y	Y								
3 Producer's Name and Address: <div style="border: 1px solid black; width: 100px; float: right; margin-top: -20px; padding: 2px;">Tax Identification Number ▶</div>	4 Importer's Name and Address <div style="border: 1px solid black; width: 100px; float: right; margin-top: -20px; padding: 2px;">Tax Identification Number ▶</div>												

5 Description of Good(s)	6 HS Tariff Classification Number	7 Preference Criterion	8 Producer	9 Net Cost	10 Country of Origin

11 I certify that:

- the information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;
- I agree to maintain, and present upon request, documentation necessary to support this Certificate, and to inform, in writing, all persons to whom the Certificate was given of any changes that would affect the accuracy or validity of this Certificate;
- the goods originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the North American Free Trade Agreement, and unless specifically exempted in Article 411 or Annex 401, there has been no further production or any other operation outside the territories of the Parties; and
- this Certificate consists of _____ pages, including all attachments.

Authorized Signature	Company						
Name	Title						
Date (DD / MM / YY)	Telephone						
<table style="display: inline-table; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 20px; text-align: center;"> </td> <td style="border: 1px solid black; width: 20px; text-align: center;"> </td> <td style="border: 1px solid black; width: 20px; text-align: center;"> </td> <td style="border: 1px solid black; width: 20px; text-align: center;"> </td> <td style="border: 1px solid black; width: 20px; text-align: center;"> </td> <td style="border: 1px solid black; width: 20px; text-align: center;"> </td> </tr> </table>							FAX

B 232E (93/12) Printed in Canada

Canada

Field 1 - Exporter's name and address

Canadian exporters or Canadian producers shipping goods to the U.S. or Mexico — State the full legal name, address (including the country), and legal tax identification number of the exporter. The number is the employer number or importer/exporter number that Revenue Canada assigns.

U.S. exporters or U.S. producers shipping goods to Canada — State the full legal name, address (including the country), and legal tax identification number of the exporter. The number is the employer identification number that the Internal Revenue Service of the U.S. Department of the Treasury assigns or, if applicable, the social security number.

Mexican exporters or Mexican producers shipping goods to Canada — State the full legal name, address (including the country), and legal tax identification number of the exporter. The number is the federal taxpayer's registry number.

Field 2 - Blanket period

A certificate can apply to:

- a single shipment of goods; or
- a multiple shipment of identical goods.

A certificate that covers multiple shipments is called a **blanket certificate**. Field 2 indicates the starting and ending dates of the blanket period for which certification is being made. The blanket period can last from two days to one year. It is acceptable to have a starting date that is before the date the certificate is signed. The importer can apply for a refund of the duty paid on goods entered into the country before the certificate covering these goods is signed.

A blanket certificate certifies that all goods listed in field 5 of that document that are imported into Canada during the blanket period qualify as originating under the rules of origin, and that those goods are eligible for preferential tariff treatment.

When goods are imported into a bonded warehouse, it is the date they enter the warehouse that should be covered by the blanket period. The fact that accounting for the goods and claiming a NAFTA tariff treatment might not occur until sometime later does not affect the validity of the certificate, as long as the goods entered Canada within the blanket period.

Field 3 - Producer's name and address

State the full legal name, address (including the country), and legal tax identification number, as defined in field 1, of the person or company that produced the goods.

If the exporter is also the producer of the goods, enter "same."

If the certificate covers goods produced by more than one company, attach a list of the producers with the appropriate information. Cross-reference the producers with the goods they produced, as described in field 5.

If the exporter does not wish to disclose the identity of the producer to the importer, it is acceptable to state "available to customs on request."

If exporters do not know the identity of the producer of the goods, that usually means that they do not know the origin of the goods, and therefore should not be completing a *Certificate of Origin*. However, in rare instances, it is acceptable for the exporter to state that the producer is "unknown."

Example

When an exporter has purchased produce from a farm co-operative, the exporter knows that the co-operative purchases produce from only American farmers within a limited geographic region, but does not know who the individual farmers (the actual producers) are. The exporter should identify the farm co-operative while stating that the producer is "unknown."

Field 4 - Importer's name and address

State the full legal name, address (including the country), and legal tax identification number (as defined in field 1) of the importer.

If there is more than one importer, state "various."

If the importer is unknown, state "unknown." This often applies when producers complete certificates for exporters.

Field 5 - Description of good(s)

Provide a full description of each good covered by the certificate. List only goods that satisfy the NAFTA rules of origin. The description must provide enough detail to relate the certificate to the imported goods and to the invoice. Model and serial numbers are not required, but they can be used as a cross-reference to the invoice and to differentiate between originating and non-originating goods.

It is in the exporter's interest to give as full a description as possible, since Revenue Canada may not accept a certificate if it cannot match it to the imported goods because of a vague description.

Example

If a shipment of a dozen different types of chairs, some wood, some upholstered, and some recliners, is accompanied by a certificate that gives the description "furniture" or "various chairs," Revenue Canada will not likely accept the certificate. At the very least, such a certificate would have to be verified because the different types of chairs are made of different materials, undergo different processes of manufacture, and are classified under different harmonized system (HS) subheadings.

Goods that fall under the same origin criterion but under different HS subheadings (or conversely under the same HS subheading but a different origin criterion) must be described separately.

If the certificate covers a single shipment of a good, include the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order, purchase order, or letter of credit number.

When necessary, attach a separate listing on a continuation sheet to the certificate to provide a complete description of the good or goods.

Field 6 - HS tariff classification number

For each good described, identify the HS tariff classification. For most goods, identifying the six-digit HS subheading is sufficient. For some goods, however, the specific rule of origin (from Annex 401 of the Agreement) requires a change at the eight-digit, tariff-item level. For these goods, identify the eight-digit tariff item of the importing country.

Field 7 - Preference criteria

There are six preference criteria: A through F. Each of these preference criteria corresponds to a category of rules of origin. Since each good described in field 5 of the certificate must be an originating good, the goods must each satisfy a rule of origin. The preference criterion is essentially a code which tells both the importer and Revenue Canada which rule-of-origin category the goods satisfy. Consequently, exporters or producers will have a difficult time choosing a preference criterion if they do not first familiarize themselves with the rules of origin⁴ and apply them.

- i) **Criterion A** corresponds to article 401(a) of the Agreement, which covers goods that are "wholly obtained or produced in one or more of Canada, Mexico, and the United States."

For a definition of "goods wholly obtained or produced" in the territory of one or more of the parties, see the glossary.

Example A

- Silver mined in Mexico is originating because it was extracted in the NAFTA territory.
- Wheat harvested in the United States is originating.

Simply because goods were purchased from a supplier in Canada, the U.S., or Mexico does not automatically mean that they are wholly obtained within the meaning of criterion A. If the goods do not fit into one of the items in the list with respect to the definition, then they are not wholly obtained or produced in North America.

- ii) **Criterion B** corresponds to article 401(b) of the Agreement, which covers goods that a producer makes using non-originating materials.⁵ The non-originating materials must meet the conditions set out in the specific rule of origin that applies, which can be found in Annex 401 of the Agreement.

The rules of origin ensure that any non-originating materials undergo enough processing before they can be transformed into a North American product. Most often, the rule of origin is expressed in terms of an HS classification change. This means that a non-originating material changes from one classification number in the HS to another.

Example B

Paint (HS 3213.90.1) is imported into Mexico from Guatemala and is used to paint an earthenware pot (HS 6913.90.90). The clay for the pot is made from originating material.

The Annex 401 rule of origin for an earthenware pot states:

"A change to heading 69.01 through 69.14 from any chapter."

Since the imported paint is classified in Chapter 32 (i.e., changed to heading 69.13), it met the tariff change.

When the material is incorporated into the final product, in some cases the rule of origin requires a certain percentage of the value of the goods, referred to as regional value content, to be incurred in North America in addition to the HS classification change. The rules in Annex 401 of the Agreement define exactly what must occur before the good can be considered as originating.

- iii) **Criterion C** corresponds to article 401(c) of the Agreement, which covers goods a producer makes using only originating materials. The difference between criteria A and C is that the originating materials used under criterion C can have some non-NAFTA content which has already been transformed by the producer's North American supplier into an originating material.

Example C

A Mexican producer makes leather belts with steel buckles. If the producer wants to claim that the goods are wholly produced in North America (criterion A), the producer would have to know where the cow was born, raised, and slaughtered, where the hides were tanned, where the iron was mined, where the steel was smelted, and where the buckle was made. The belt producer may only be able to determine where the leather was tanned and where the buckles were made. If hides were tanned in North America and steel was made into buckles in North America, the leather and the buckles satisfy the rules of origin regardless of the origin of the hides or the steel. Therefore, if the originating leather and buckles are the only materials the belt producer uses, the belts are made entirely from originating materials, and the producer can claim criterion C on the certificate.

(Please note that criterion C does not necessarily mutually exclude criteria A, B, D, or E.)

- iv) **Criterion D** corresponds to article 401(d) of the Agreement, which covers goods where there is no change in tariff classification from non-originating materials to the finished good. However, since criterion D applies only in two very limited circumstances, its use is quite rare.

Please note that criterion D can **never** be used for wearing apparel provided for in chapters 61 and 62 of the HS, or for textile articles described in chapter 63.

The types of goods that can be considered as originating under criterion D are as follows:

- Goods which are complete except for being imported into the NAFTA territory in an unassembled or disassembled condition can be considered as originating. The unassembled or disassembled materials are classified in the HS under the same heading or subheading as the assembled good, and the heading or subheading cannot be further divided. The cost of assembling such goods in the NAFTA territory must satisfy a regional-value-content requirement.⁶ Please note that this rule is limited to unassembled or disassembled goods in which all the materials for assembling the goods are included at the time the goods are imported into the NAFTA territory. If any other materials must be added to the non-originating unassembled or disassembled goods, the goods imported into Canada will not qualify for NAFTA.
 - When goods produced using non-originating materials that cannot undergo the required change because the non-originating materials are classified as "parts" in the HS under the same heading or subheading as the finished goods, and the heading or subheading is not further subdivided, these goods can be considered as originating. A regional-value-content condition must be satisfied.⁷
- v) **Criterion E** applies only to certain automatic data-processing goods. These goods are specifically identified in Annex 308.1 of the Agreement (Table 308.1.1). Canada, the U.S., and Mexico have agreed to reduce the most-favoured-nation (MFN) duty rate for certain automatic data-processing equipment and parts falling into the categories listed below. Except for category (vi) below, the goods will have their MFN duty rates eliminated or

reduced in five equal annual stages **starting January 1, 1999**. For category (vi) (computer parts of subheading No. 8473.30), the three parties reduced their MFN rate to free as of January 1, 1994.

The categories of goods covered under criterion E are:

- automatic data processing (ADP) machines;
- digital processing units;
- input or output units;
- storage units;
- other units of ADP (subheading No. 8471.99);
- parts of computers (subheading No. 8473.30); and
- computer power supplies.

Once the MFN duty rate has been reduced according to the staging schedule, and all three parties have arrived at the reduced rate, these goods will be considered as originating when traded among the three parties.

Example

A notebook computer of HS subheading No. 8471.20 will have an MFN rate of 3.9% common to all NAFTA countries as of January 1, 2003. If such a computer is imported into the United States from Taiwan after this date, the good will be assessed an MFN duty rate of 3.9%. If the same notebook computer is then sold to a Canadian customer, it will be considered as originating and will be free of duty when imported into Canada. This does not happen immediately; it is only **after** the MFN rate is common to all three NAFTA parties. At that time, to obtain the NAFTA rate for the notebook computer, the exporter provides a *Certificate of Origin* to the importer, noting criterion E in field 10.

- vi) **Criterion F** applies to bilateral trade agreements between NAFTA countries. One set of rules apply to U.S./Mexico trade, and another set of rules apply to Canada/Mexico trade. Criterion F is not relevant to Canada/U.S. trade.

Criterion F should not be used for goods exported from the U.S. to Canada. For goods exported from Mexico to Canada, exporters or producers should follow the instructions below.

When agricultural goods are imported into Canada, to complete field 7, the exporter or producer must first determine if they are originating goods under criterion A, B, or C (criteria D and E are not relevant to agricultural goods).

Then, if the goods are wholly produced in Mexico, or jointly produced by Mexico and the U.S. or by Mexico and Canada, it must be determined if the goods are qualifying goods within the meaning of Annex 703.2, section B, paragraph 14. Annex 703.2-B-14 states that:

... **qualifying good** means an originating good that is an agricultural good except that, in determining whether such good is an originating good, operations performed in or material obtained from the United States shall be considered as if they were performed by or obtained from a non-party. After the exporter or producer determines that the goods are originating and qualifying, they must determine if the goods are subject to any quantitative restrictions when imported into Canada. If no quantitative restrictions apply, the exporter or producer may use criterion F.

Field 8 - Producer

In this field, the person completing the *Certificate of Origin* is telling Revenue Canada why that person has the information needed to substantiate the certificate.

If the exporter is the producer of the goods, state "yes."

If the exporter is not the producer, state "no," followed by one of three possible explanations why the exporter is in a position to certify the origin of the goods:

- state "no(1)" if the origin of the goods was certified based on the exporter's knowledge of whether the goods qualify as originating;
- state "no(2)" if the person signing the certificate is relying on written information from the producer (other than a *Certificate of Origin*) documenting that the goods qualify as originating; or
- state "no(3)" if a completed and signed *Certificate of Origin* for the goods was provided to the exporter by the producer.

Whether or not an exporter can use "no(1)" will depend on the specific rule of origin. If the rule of origin requires only a tariff change, and the exporter knows where the tariff change occurs, then the exporter can use "no(1)." However, if the rule of origin involves a regional-value-content requirement, it is unlikely that the exporter will be able to substantiate the certificate without cost-of-production documentation from the producer.

If exporters cannot substantiate the origin of goods, they should not be completing a *Certificate of Origin*.

Field 9 - Net cost

In this field, those completing the *Certificate of Origin* indicate whether or not they used the net cost method to determine the regional value content (RVC) of a good. If the rule of origin for the goods requires the RVC to be calculated, exporters or producers can use two methods of calculation. One is the **transaction value method**, and the other is the **net cost (NC) method**. This field should be completed in all cases if one of the following applies:

- If the exporters or producers have used the net cost method to determine the RVC, they will indicate "NC."
- If the exporters or producers have used the transaction value method, they will indicate "no."
- If the rule of origin for the goods does not require the RVC to be calculated, the exporters or producers will indicate "no."

In some cases, when exporters or producers use the net cost method to calculate RVC, they are entitled to average certain costs over a period of time. If they have averaged costs, they should identify the starting and ending dates of the averaging period below the "NC" (e.g., "02/01/95 - 31/03/95").

Field 10 - Country of origin

This field has different applications for each country.

If field 10 is not completed, neither the importer nor Revenue Canada will know which of the different tariff treatments the goods are eligible to receive. In this case, Revenue Canada will expect the importer to pay the highest applicable NAFTA duty rates.

For most goods imported into Canada, there are three NAFTA tariff treatments.

For originating agricultural and textile goods imported into Canada, the exporter or producer should indicate either "US" or "MX" in field 10. If there is some joint production of the agricultural or textile goods between the U.S. and Mexico, the exporter or producer must apply the *Determination of Country of Origin for the Purposes of Marking Goods Regulations* to determine whether the goods are Mexican or American.

For all other goods imported into Canada, the exporter or producer will indicate either "US," "MX," or "JNT" in field 10. "JNT" stands for joint production of goods between the U.S. and Mexico. Generally speaking, using "JNT" will result

in the highest NAFTA duty rate being applied to the goods. However, some rules of origin essentially say that, if there is joint production between the U.S. and Mexico and the contribution of one of those countries is relatively insignificant, the exporter can claim that the goods originate in the country where most of the production occurred. When both the U.S. and Mexico contribute significantly to the production of the goods, the exporter must state "JNT" in field 10. When there is joint production of the goods between the U.S. and Mexico, the exporter or producer should see the *NAFTA Tariff Preference Regulations*, found in Revenue Canada Memorandum D11-4-19, *Regulations Respecting the Determination of When Goods are Entitled to the Benefit of the United States Tariff or Mexico-United States Tariff*, to determine whether they should complete field 10 with "US," "MX," or "JNT."

Field 11 - Certification

The exporter or producer completing the *Certificate of Origin* is strongly advised to **read the statements in field 11** before signing the certificate.

All the information in field 11 (which includes the signature area) must be completed.

In addition to being able to substantiate the origin of the goods, the person signing the certificate should be someone in the company who is entitled to sign legally binding documents on behalf of the exporter or producer. That person should have full knowledge of the origin of the goods, and have access to the books and records that substantiate the claim. If the statements made in the certificate are untrue, the company could be liable for penalties.⁸

8. Additional information

For more information, see the following publications:

- Memorandum D11-4-2, *Proof of Origin*
- Memorandum D11-4-13, *Rules of Origin for Casual Goods*
- Memorandum D11-4-14, *Certificate of Origin*
- Memorandum D11-4-18, *Uniform Regulations - Chapter Five of the NAFTA*
- Memorandum D11-4-19, *Regulations Respecting the Determination of When Goods Are Entitled to the Benefits of the United States Tariff, Mexico Tariff or Mexico-United States Tariff*
- Memorandum D11-5-1, *Rules of Origin*
- Memorandum D17-1-1, *Presentation and Processing of Accounting Documentation and the Examination of Goods*

- Memorandum D11-3-1, *Determination of Country of Origin for the Purposes of Marking Goods Regulations*
-

- 1 For more information on time limits for claiming NAFTA tariff treatments, see Chapter 5, "Post Importation Claims and Corrections," or Chapter 7, "Review and Appeal."
- 2 For more information on refunds and corrections, see Chapter 5, "Post Importation Claims and Corrections."
- 3 See the glossary.
- 4 For additional information on the rules of origin, see the guide called *Revenue Canada Customs, NAFTA Rules of Origin*.
- 5 See the glossary.
- 6 This requirement is 60% when the transaction value method is used, or 50% when the net cost method is used.
- 7 This condition is 60% when the transaction value method is used, or 50% when the net cost method is used.
- 8 The company may also be liable to the Canadian importer for the additional duties that were not anticipated because of the exporter's or producer's representation that the goods were eligible for NAFTA.

Chapter 2: Marking

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Chapter 2: Marking

Since Canada's marking requirements are detailed, especially for goods imported from NAFTA countries, this chapter is divided into five sections:

- A: General
- B: Goods to be marked
- C: Exemptions
- D: Method and manner
- E: Containers

Section A: General

1. Introduction

In Canada, certain imported goods must indicate to the ultimate purchaser the country in which the goods were made. For goods imported from a NAFTA country, the ultimate purchaser is the last person in Canada who purchases the goods in the form in which they are imported, whether or not that purchaser is the last person to use the goods in Canada.

When goods are imported from a non-NAFTA country, the marking should indicate to the ultimate purchaser (or when there is no ultimate purchaser, to the ultimate recipient) the country of origin of the goods. The ultimate recipient is the last person in Canada who receives the goods in the form in which they are imported.

The requirement for country-of-origin marking is not the same as Canadian labelling requirements that deal with consumer packaging, or textile labelling requirements for food and textile products. For example, Industry Canada's regulations require that certain product-specific information, such as the fibre content of wearing apparel, be placed on a product.

This chapter deals primarily with NAFTA marking provisions. To help importers, exporters, and producers understand the Canadian marking program, information on non-NAFTA marking requirements is included.

With the implementation of NAFTA between Canada, the United States, and Mexico, new country-of-origin marking requirements for goods imported into Canada from NAFTA countries were introduced. Also, there have been changes to the marking

requirements for goods from countries that are not part of NAFTA. Here are some of the highlights of the changes prompted by NAFTA:

- importers, exporters, or producers can request advance rulings from Revenue Canada on marking issues;
- the country of origin will be determined by individual marking rules of origin, based on tariff classification change of components of the final product;
- importers, exporters, or producers can request reviews or file appeals of Revenue Canada's marking determinations, redeterminations, or advance rulings;
- civil penalties can be imposed; and
- Canada will exchange information on marking issues with Mexico and the United States.

For details of the legislative authority for marking, see section 63.1 of the *Customs Tariff Act*, and sections 35.01, 35.02, 43.1, 57.01, 61, 63, 64, 67, 68, and 159.1 of the *Customs Act*.

2. Purpose

This section explains the general guidelines for:

- country-of-origin marking rules;
- determinations and redeterminations;
- advance rulings;
- requests for review and appeals;
- penalties; and
- authorization to mark goods in Canada.

3. Persons affected

Importers, exporters, and producers are affected by marking requirements.

4. Country-of-origin marking rules

For goods imported into Canada from a NAFTA country, country-of-origin marking rules are used to determine the country of origin to be marked on the goods. These rules are new under NAFTA and apply only to NAFTA goods. For goods imported from a non-NAFTA country, the country of origin is the country where the goods were substantially manufactured.

Do not confuse marking rules with the **rule-of-origin** rules, which determine if a good originates in a NAFTA country or countries and are subject to preferential tariff rates. However, for textile, apparel, and agricultural products, the marking rules are also used to determine whether Mexican or U.S. tariff treatment applies.

To determine the country of origin¹ of goods imported from a NAFTA country, the following criteria, although not all-inclusive, can be used as a guide. Generally, the country of origin is the country where:

- the goods are wholly obtained or produced;
- the goods are produced exclusively from domestic materials;
- the foreign materials incorporated into the goods undergo a specific marking tariff classification change; or
- the single material that gives the goods their essential character was produced.

5. Determinations and redeterminations

A marking determination or redetermination is a written decision from Revenue Canada indicating whether or not the goods imported into Canada have been marked according to the requirements. Marking determinations and redeterminations apply only to goods imported from Mexico and the United States.

Basically, a decision is based on the answers to three questions:

- Do the goods have to be marked with their country of origin?
- Was the correct country of origin marked on the goods?
- Are the method and manner used to mark the goods acceptable?

Revenue Canada usually has to give a marking determination no later than 30 days after receiving the accounting documents. A request for a marking redetermination must be submitted no later than 90 days after the date the Department makes a marking determination.

Generally, there are two instances when Revenue Canada can extend the time period for making a redetermination to two years. In the first instance, the Department concludes that the importer, exporter, or producer has not complied with a notice of non-compliance, or a determination or redetermination. In the second instance, a request for review of the marking determination or redetermination has been made no later than one year after receiving a determination or redetermination (see paragraph 7 of this section, "Requests for review and appeal").

6. Advance rulings

NAFTA advance rulings² are binding decisions that Revenue Canada issues on a variety of topics, one of which is marking. Importers, exporters, or producers can request, in writing, an advance ruling on a country-of-origin marking issue for goods to be imported from a NAFTA country. The request can be based on one or more of the marking questions specified in paragraph 5 of this section, "Determinations and redeterminations."

Revenue Canada issues rulings no later than 120 days after it receives all necessary information. The Department also exchanges information on all types of advance rulings with the customs administrations of Mexico and the U.S.

7. Requests for review and appeal

If an importer, exporter, or producer does not agree with Revenue Canada's marking determination, redetermination, or advance ruling, that person can ask for a review of the decision by the Deputy Minister of Revenue Canada.

A person requesting a review of a marking determination,³ redetermination, or advance ruling has to file the request with the Revenue Canada office that made the decision no later than 90 days after the person received notice of the decision or, when the Minister deems it advisable, no later than one year after the original determination or advance ruling was made. In exceptional cases only, and according to strict criteria, a person can request a review up to two years after the original determination or advance ruling was made.

If a person is not satisfied with a marking redetermination the Deputy Minister made, that person can appeal the decision to the Canadian International Trade Tribunal (CITT) by filing a notice of appeal to the Deputy Minister of Revenue Canada and to the CITT. The person has to file the appeal no later than 90 days after receiving the Deputy Minister's decision. If the person is not satisfied with the CITT decision, that person can appeal the decision to the Federal Court of Canada no later than 90 days after receiving the decision.

8. Penalties

If a person fails to mark goods according to the marking requirements, Revenue Canada may impose civil and criminal penalties for goods imported from both NAFTA and non-NAFTA countries.

These civil penalty provisions apply as follows:

- For goods imported from a NAFTA country, a person is liable to a civil penalty of \$250 for each failure to comply with the marking requirements, **after the first infraction**. If such goods are marked in a deceptive manner, the \$250 penalty will be assessed on the first infraction.
- For goods imported from a non-NAFTA country, a person is liable to a civil penalty of \$250 for each failure to comply, **including the first infraction**.
- When an infraction occurs, a notice of non-compliance will be issued.
- Every person who fails to comply with a notice of non-compliance issued by Revenue Canada is liable to an additional penalty of up to \$2,000.

Criminal penalties apply to everyone who:

- marks the goods in a deceptive manner that could mislead another person as to the correct country of origin of the goods; or
- alters, defaces, removes, or destroys a mark on imported goods, with the intent to conceal the information given by the mark.

9. Authorization to mark goods in Canada

Under certain conditions, Revenue Canada can grant authorization to importers to mark imported goods before they are released from customs. These provisions apply to NAFTA and non-NAFTA countries.

Importers have to meet the following conditions before Revenue Canada will give approval to mark goods in Canada:

- the goods cannot be imported as mail;
- importers were not issued a notice of non-compliance for similar or identical goods more than 30 days and less than two years before they imported the goods;
- importers have to give written notification to Revenue Canada that they will mark the goods in Canada; and
- transfer of ownership of the goods cannot take place until the importers properly mark the goods.

If Revenue Canada grants authorization, the goods can be marked at the following locations:

- a Revenue Canada office, if there are no space limitations;
- a bonded warehouse; or
- the importer's premises (importers will need a bonded warehouse license to mark the goods at this type of location).

10. Additional information

For more information, see the following publications:

- Memorandum D11-3-1, *Marking of Imported Goods*
- Memorandum D11-3-2, *Marking Determination/Redetermination of Goods Imported from a NAFTA Country*
- Customs Notices 842 and 843, *New Country-of-Origin Marking Program*
- Memorandum D11-4-16, *Advance Rulings*

Section B: Goods to be marked

1. Introduction

NAFTA has not substantially changed the 60 classes of goods that require country-of-origin marking when they are imported into Canada. The list of goods that need to be marked includes NAFTA and non-NAFTA goods.

Certain types of goods, or goods imported under specific conditions, may be exempt from the country-of-origin requirements. New exemptions have been introduced for goods imported from a NAFTA country. However, exemptions that apply to non-NAFTA goods have not changed. Goods, or their containers, that are imported from NAFTA countries for which there will be no ultimate purchaser do not have to show their country of origin. See "Section C - Exemptions" for details on exemptions.

For details on the legislative authority for goods that require country-of-origin marking, see paragraph 63.1(1)(a) of the *Customs Tariff Act*.

2. Purpose

This section lists the classes of goods that require country-of-origin marking.

3. Persons affected

Importers, exporters, and producers are affected by marking requirements.

4. List of goods to be marked

The list is divided into the following categories:

1. Goods for personal or household use
2. Hardware
3. Novelties and sporting goods
4. Paper products
5. Wearing apparel

An additional section on containers has been added to the list of goods imported from NAFTA countries that need marking. Detailed information on containers is in "Section E - Containers."

List of goods to be marked

Goods from a NAFTA or non-NAFTA country

The following goods are required to be marked with their country of origin whether they are imported from a NAFTA or a non-NAFTA country.

1. Goods for personal or household use

1. Bakeware and cookware made of aluminum
2. Bakeware and cookware made of cast iron
3. Bath mats, towels, and wash cloths, knitted or woven
4. Batteries, dry cell
5. Blankets
6. Brushes, including toothbrushes and handles therefor
7. Candles
8. Cards, the following: credit and identification, made of any material having a diameter or side exceeding ½inch in width and imported in sheet form or otherwise
9. Chrome-plated ware and utensils for use in serving food and beverages
10. Cigar and cigarette lighters, except lighters for incorporation into motor vehicles
11. Clocks and movements, except clocks and movements for use as original equipment by motor vehicle manufacturers
12. Containers, thermostatic, the following: carafes, flasks, jars, jugs, and vacuum bottles, and refills or inserts therefor
13. Cutlery, chrome-plated or stainless steel
14. Dishes and ornaments made of china, earthenware, ironstone, porcelain, semi-porcelain, stoneware, or white granite
15. Electronic equipment, the following: phonographs, radio receiving sets, radio-phonograph sets, radio-phonograph-television sets, record players, tape recorders, and television receiving sets
16. Ironing board covers and pads
17. Kitchenware made of metal or plastic, coated, lithographed, painted, or otherwise, the following: bread boxes, cake humidors, canisters, foil and paper dispensers, range sets, serving ovens, and step-on waste cans
18. Knives, the following: jack, pen and pocket; scissors and shears
19. Lawn mowers (powered)
20. Matches in books, boxes, or folders
21. Pencils
22. Pens, the following: ball point and fountain; and nib penholders
23. Pillowslips and sheets made of cotton
24. Razor blades (safety type)
25. Thermometers

26. Tiles, glazed, unglazed, and ceramic mosaic, the following: hearth, floor, and wall
27. Umbrellas
28. Utensils, kitchen type, and chrome-plated or stainless steel
29. Watch bracelets (expansion type)

2. Hardware

1. Caps, made of metal, lithographed, or printed, for containers, the following: lug, screw, and vacuum
2. Copper tubing
3. Drapery I-beam rails, made of aluminum, brass, steel, or other metals, or plastic and component parts thereof
4. Electrical measuring devices for panel mounting designed to indicate alternating or direct current microamperes, milliamperes, or amperes, millivolts, volts, or kilovolts and such other variables as pressure, resistance, and temperature that may be translated into alternating or direct current or voltage
5. Glass in panes or sheets, the following: common or colourless window, laminated, plate, and sheet
6. Goods made of porcelain for electrical use
7. Files and rasps
8. Sink strainers (basket type)
9. Tubes, electronic
10. Twines, the following: baler and binder
11. Wire insect screening
12. Iron or steel pipes and tubes

3. Novelties and sporting goods

1. Articles in the style of Indian handicrafts
2. Athletic gloves and mitts, including baseball and hockey gloves and mitts
3. Bicycles
4. Decorations, novelties, and ornaments
5. Enamelled emblems and silver-plated or sterling silver bracelets, brooches, pins, and spoons, all designed as souvenirs of Canada, its provinces, territories, cities, towns, or other geographical locations
6. Gift wrappings, the following: bindings, braids, ribbons, tapes, ties and trimmings, made chiefly or wholly of textile fibres
7. Toys, games, and athletic and sporting goods

4. Paper products

1. Boxes and cartons, empty folding or set-up, made of paper, paper board, plain or corrugated fibre, or fibre board, for use as shipping containers
2. Paper matter and products, lithographed or printed

5. Wearing apparel

1. Boots, shoes, and slippers
2. Brassieres, corselettes, garter belts, girdles, and lacing corsets
3. Fabrics, braided or woven, containing rubber yarns, not exceeding 12 inches in width; boot and shoe laces
4. Gloves made partially or wholly of leather
5. Hair pieces, the following: wigs, half wigs, switches, postiches, pony tails, toupees, and other types of hair pieces designed to be worn on the head of a person
6. Handbags and purses, except handbags and purses made of beads, metal mesh, or similar material
7. Hats, including berets, bonnets, caps, and hats, hoods and shapes made of fur felt, wool felt, and wool-and-fur felt
8. Knitted garments
9. Raincoats and rainwear made of plastic
10. Wearing apparel made wholly or substantially of natural or synthetic textile fibres.

6. Containers (only applicable to goods imported from NAFTA countries)

1. Outermost usual containers of goods that are referred to in items 10, 11, 12, 13, or 18 of list of exemptions in "Section C - Exemptions"
2. Containers in which empty usual containers are imported
3. Usual containers that are imported filled, unless the goods they contain are marked in accordance with the *Marking of Imported Goods Regulations*.

5. Additional information

For more information, see the following publications:

- Customs Notices N842 and 843, *New Country-of-Origin Marking Program*
- Memorandum D11-3-1, *Marking of Imported Goods*

Section C: Exemptions

1. Introduction

Certain types of goods, or goods imported under specific conditions, may be exempt from country-of-origin marking. There are 24 exemptions that apply to goods imported from a NAFTA country. Of these exemptions, 17 are new, and 7 were in effect before NAFTA. The 7 exemptions also apply to goods imported from non-NAFTA countries.

The list of NAFTA exemptions includes several references to the **ultimate purchaser**. As stated in "Section A - General," the ultimate purchaser is usually the last person in Canada who purchases the goods in the form in which they are imported, whether or not that purchaser is the last person to use the goods in Canada.

For details on the legislative authority for exemptions, see paragraph 63.1(1)(a) of the *Customs Tariff Act*.

2. Purpose

This section outlines the exemptions from country-of-origin marking requirements that apply to goods imported from NAFTA and non-NAFTA countries.

3. Persons affected

Importers, exporters, and producers are affected by marking requirements.

4. Exemption

Goods exempt from marking

A) Goods from a non-NAFTA country

1. Donations for charitable purposes and not for the purpose of sale
2. Gifts or bequests
3. Antiques
4. Used goods, with the exception of iron or steel pipes and tubes
5. Goods for the exclusive use of the importer or that importer's employees and not for resale to the general public, with the exception of iron or steel pipes and tubes

6. Goods that are imported under tariff item numbers 9808.00.00, 9809.00.00, or 9810.00.00 of Schedule I to the *Customs Tariff*
 - 9808.00.00:** articles for the personal or official use of representatives of foreign countries and of Her Majesty's Governments, and for the personal use of their families, suites or servants, under regulations prescribed by the Governor in Council;
 - 9809.00.00:** articles for the use of the Governor General;
 - 9810.00.00:** arms, military stores, munitions of war and other goods the property of and to remain the property of a country entitled to the benefit of the British Preferential Tariff designated by the Governor in Council or of a foreign country that is a party to the North Atlantic Treaty and is designated by the Governor in Council; goods consigned to military service agencies and institutions designated by the Governor in Council where the goods are for the personal use of or consumption by nationals of countries designated under this heading who are employed in defence establishments of those countries in Canada.
7. Goods imported for subsequent exportation from Canada, with the exception of iron or steel pipes and tubes

B) Goods from a NAFTA country

1. Goods for charitable purposes and not for the purpose of sale
2. Goods that are gifts or bequests
3. Goods that are antiques, or goods produced more than 20 years prior to importation
4. Used goods, with the exception of iron or steel pipes and tubes
5. Goods that are for the exclusive use of the importer or that importer's employees and not for resale to the general public, with the exception of iron or steel pipes and tubes
6. Goods imported for use by the importer and not intended for sale in the form in which those goods were imported
7. Goods that are imported under the following tariff item numbers 9808.00.00, 9809.00.00, or 9810.00.00 of Schedule I to the *Customs Tariff*
 - 9808.00.00:** articles for the personal or official use of representatives of foreign countries and of Her Majesty's Governments, and for the personal use of their families, suites or servants, under regulations prescribed by the Governor in Council;
 - 9809.00.00:** articles for the use of the Governor General;
 - 9810.00.00:** arms, military stores, munitions of war and other goods the property of and to remain the property of a country entitled to the benefit of the British Preferential Tariff designated by the Governor in Council or of a foreign country that is a party to the North Atlantic Treaty and is designated by the Governor in Council; goods consigned to military service agencies and institutions designated by the Governor in Council where the goods are for the

personal use of or consumption by nationals of countries designated under this heading who are employed in defence establishments of those countries in Canada.

8. Goods that are imported for subsequent exportation from Canada, with the exception of iron or steel pipes and tubes
9. Goods, for purposes of temporary duty-free admission, that are in transit or in bond or otherwise under customs administration control
10. Goods that are incapable of being marked
11. Goods that cannot be marked prior to exportation without causing injury to those goods
12. Goods that cannot be marked except at a cost that is substantial in relation to their customs value so as to discourage their exportation
13. Goods that cannot be marked without materially impairing their function or substantially detracting from their appearance
14. Goods that are in a container that is marked in a manner that will reasonably indicate the goods' origin to the ultimate purchaser
15. Goods that are crude substances
16. Goods that are to undergo production in Canada by the importer, or on that importer's behalf, in a manner that would result in the goods becoming goods of the country of origin, which is Canada
17. Goods in respect of which, by reason of their character or circumstances of their importation, the ultimate purchaser would reasonably know their country of origin even though these goods are not marked with country of origin
18. Goods that are imported without the required marking and cannot be marked after their importation except at a cost that would be substantial in relation to their customs value, provided that the failure to mark those goods before importation was not for the purpose of avoiding compliance with the requirement
19. Goods that are original works of art
20. Goods that are classified under subheading number 6904.10 (ceramic building bricks), or subheading number 85.41 (diodes, transistors, and similar semi-conductor devices (includes photosensitive)), or 85.42 (electronic integrated circuits and microassemblies) and satisfy any other applicable requirements of these Regulations
21. Goods in respect of which there is no ultimate purchaser
22. Goods that are usual containers and that are imported empty
23. Goods that are usual containers that are imported filled with goods that are marked in accordance with the *Marking of Imported Goods Regulations*
24. Goods that are containers that contain goods in respect of which there is no ultimate purchaser.

5. Additional information

For more information, see the following publications:

- Customs Notice N842 and 843, *New Country of Origin Marking Program*
- Memorandum D11-3-1, *Marking of Imported Goods*

Section D: Method and manner

1. Introduction

Importers who bring goods into Canada from both NAFTA and non-NAFTA countries usually have to clearly mark the goods to indicate the country of origin (e.g., "Made in Mexico," "Produced in U.S.A.," or "Printed in Australia"). The marking indicates to the ultimate purchaser or ultimate recipient in Canada the country of origin of the goods.

Any method of marking that remains on the good or its container (when applicable) until the product reaches its ultimate purchaser or ultimate recipient is acceptable. In most cases, the method and manner of marking that is acceptable depends on the nature of the good.

For legislative information on the method and manner of marking, see subsection 63.1(2) of the *Customs Tariff*, and sections 3 to 12 of the *Marking of Imported Goods Regulations*.

2. Purpose

This section outlines the method and manner in which goods have to be marked.

3. Persons affected

Importers, exporters, and producers are affected by the methods and manner of marking requirements.

4. Method and manner

4.1 Language

For goods imported from a NAFTA country, the country of origin can be indicated in English, French, or Spanish.

For goods imported from a non-NAFTA country, it is acceptable to mark the country of origin in either English or French.

4.2 Country-of-origin reference

In general, when marking goods from both NAFTA and non-NAFTA countries, the name of the country of origin should be clearly indicated. The acceptable wording that can be used to show the country of origin for marking purposes is either the name of the country alone, or the name of the country preceded by an expression like "Made in...", "Produced in...", or "Printed in..." In the past, it was acceptable to use municipal, provincial, or state names. However, now the name of the country has to be cited for NAFTA and non-NAFTA goods.

4.3 Abbreviations

An abbreviation for the country of origin can be used, as long as it clearly reflects the country of origin (e.g., U.S.A., Luxembg, Singpor). In some instances, short country names cannot be abbreviated if it may be more difficult for the ultimate purchaser or ultimate recipient to determine the name of the country.

4.4 Legible, permanent, and conspicuous

Generally, the country-of-origin marking reference will be legible, sufficiently permanent, and capable of being easily seen during normal handling of the goods or their container. For NAFTA goods, Revenue Canada will accept any reasonable method of marking that remains on the product or, in some cases, its container, until the product reaches the ultimate purchaser. For non-NAFTA goods, Revenue Canada will accept any reasonable method of marking that remains on the product until the product reaches the ultimate purchaser or, if there is no ultimate purchaser, the ultimate recipient. The following are examples of acceptable methods of marking:

- cast-in-mould lettering
- etching
- decalcomania transfer
- labels (sewn-in or adhesive)
- die stamping
- printing
- embossing
- stencilling
- engraving
- tags

There are special provisions for iron or steel pipes and tubes, paper products, and containers. For details on provisions about steel pipes and tubes, and paper products, see paragraph 5, "Special provisions." For details on provisions for containers, see "Section E - Containers."

4.5 Close proximity

To avoid confusion about the country of origin of the goods, if the words **Canada** or **Canadian** appear on the goods either spelled in full or abbreviated, the country of origin may have to appear in close proximity to that reference, and may have to be preceded by such words as "Made in," "Produced in," or "Printed in." The same provision applies if any other country or place name appears, other than that of the country of origin. For this provision to apply, the presence of these words referring to other geographic locations must be expected to mislead the ultimate purchaser or ultimate recipient.

5. Special provisions

There are provisions for the marking of iron or steel pipes and tubes, and printed or lithographed paper products.

5.1 Iron or steel pipes and tubes

The acceptable methods of marking for iron or steel pipes and tubes are:

- paint stencilling;
- die stamping;
- cast-in-mould lettering;
- etching; and
- engraving.

Each imported bundle of iron or steel pipes or tubes with an inside diameter of 4.8 cm (1.9 inches) or less has to be tagged or labelled.

Iron or steel pipes and tubes that have a critical surface finish (e.g., ornamental products) can be marked by:

- tagging or labelling each pipe or tube; or
- tagging or labelling each bundle of pipes or tubes.

There are exemptions to the marking of iron or steel pipes and tubes. A pipe or tube is exempted from the country-of-origin marking requirements if it is:

- intended for use as a part;
- intended for use as a casting or mould in a manufacturing process;
- imported for use as original equipment in certain motor vehicles; or
- made up of more than 50% of a material other than iron or steel.

5.2 Paper products

There are also provisions for marking certain paper products. Country-of-origin marking for goods that are printed or lithographed paper products should not be smaller than 1.6 mm (1/16th of an inch). Also, the marking must be in a colour that is as bold as any other characters or images on the product.

6. Additional information

For more information, see Memorandum D11-3-1, *Marking of Imported Goods*.

Section E: Containers

1. Introduction

As a result of NAFTA, new provisions have been introduced for the marking of containers imported from a NAFTA country, or containers in which NAFTA goods are imported.

2. Purpose

This section explains the provisions that apply to the marking of containers.

3. Persons affected

The following persons may be affected by the marking requirements for containers:

- Canadian importers;
- Mexican and U.S. exporters; and
- Mexican and U.S. producers.

4. Marking of containers

4.1 Containers of exempt goods

As explained in Section C, certain goods, or goods imported under specific conditions, do not need to be marked. However, for several NAFTA exemptions, the **outermost usual containers** must show the country of origin of the goods inside. As specified in the glossary, "outermost usual containers are shipping containers used to transport goods." In some cases, goods may reach the ultimate purchaser in the outermost usual shipping container.

Marking on the outermost usual container is required for goods imported under one of the following NAFTA exemptions:

- goods that cannot be marked (exemption 10);
- goods that cannot be marked before being exported without injuring the goods (exemption 11);
- goods that are so expensive to mark in relation to their customs value that marking them would discourage their exportation (exemption 12);
- goods that cannot be marked without materially impairing their function or substantially detracting from their appearance (exemption 13); and
- goods that are imported without the required marking and cannot be marked

after being imported except at a cost that would be substantial in relation to their customs value, as long as the failure to mark those goods before they are imported was not for the purpose of avoiding compliance with the requirement (exemption 18).

4.2 Containers imported filled

When goods need to be marked, as specified in the "List of goods to be marked" in section B, the country of origin can appear on the usual container (point-of-sale packaging), if this is the manner in which the ultimate purchaser buys the good. However, if the country of origin does not appear on the usual container of such a good, the country of origin has to appear on the good and the usual container must be easy to open for inspection, or the marking of the contents has to be visible through the usual container.

4.3 No ultimate purchaser

Goods or their containers imported from NAFTA countries for which there will be no ultimate purchaser do not have to show their country of origin. See "Section C - Exemptions" (Appendix A, NAFTA exemption 21) for details.

5. Additional information

For more information, see the following publications:

- Customs Notice N843, *New Country of Origin Marking Program*
- Memorandum D11-3-1, *Marking of Imported Goods*

-
- 1 For more information on country-of-origin marking rules, see Revenue Canada Notice 843, *New Country-of-Origin Marking Program*.
 - 2 See Chapter 3: Advance Rulings.
 - 3 See Chapter 7: Review and Appeal.

Chapter 3: Advance Rulings

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Chapter 3: Advance Rulings

1. Introduction

A NAFTA advance ruling is a written statement from Revenue Canada expressing how it will interpret specific provisions of NAFTA concerning goods being imported into Canada from another NAFTA country. By obtaining the advance ruling, the person applying for the ruling (the applicant) can be sure of any effect NAFTA will have on a proposed importation. Revenue Canada will issue the advance ruling within 120 days of receiving complete information from the applicant. Revenue Canada honours all the rulings it issues, unless certain circumstances require that a ruling be modified or revoked.

The legislative provisions which cover advance rulings are sections 43.1 and 63 of the *Customs Act*.

2. Purpose

This chapter outlines the procedures applicants should follow to request an advance ruling.

3. Eligible applicants

An application for an advance ruling on goods proposed to be imported into Canada may be made by the following classes of persons:

- **importers**, who are Canadians importing the goods;
- **producers** in Mexico or the United States (U.S.), who are the persons who produce the goods or materials that are incorporated into the goods;
- **exporters** in Mexico or the U.S., who are the persons exporting the goods to Canada; or
- **authorized agents** of importers, producers, or exporters.

4. Subject matter

4.1 Questions the applicant can ask

For goods from another NAFTA country, Revenue Canada will issue an advance ruling on the following topics:

- originating goods;
- rules of origin;

- originating goods;
- rules of origin;
- tariff treatment; and
- marking.

Originating goods

Applicants can ask whether the good qualifies as **originating** in the NAFTA territory, and therefore qualifies for preferential tariff treatment. For NAFTA purposes, **originating** describes those goods that have had enough processing in Canada, Mexico, or the U.S. to be eligible for favourable customs duty rates.

Rules of origin

Rules of origin establish which goods originate in the NAFTA territory. Two frequently cited rules are the tariff classification change and the regional-value-content (RVC) requirement. The applicant can ask whether:

- non-originating materials used in the production of the good undergo a suitable change in tariff classification;
- the good satisfies an RVC requirement; or
- a specific cost allocation or valuation method can be used when calculating the RVC.

Tariff treatment

Applicants can request a ruling on whichever of the three NAFTA tariff treatments an originating good qualifies for. Canada has different tariff treatments and duty rates for Mexican NAFTA goods, U.S. NAFTA goods, and NAFTA goods produced jointly in the U.S. and Mexico.

Marking

Applicants can ask whether a good has to be marked with the country of origin, what country must be marked on the goods, and the method and manner of marking.

If the applicant's question does not fall within the scope of the above categories, Revenue Canada may respond with a National Customs Ruling (NCR) rather than an advance ruling. For instance, questions regarding tariff classification and value for duty are answered by NCRs. For more information on NCRs, see Customs Memorandum D11-11-1, *National Customs Rulings*.

4.2 Exclusions

The following are some of the circumstances under which Revenue Canada can refuse requests for advance rulings:

- if it is not possible to determine all the material facts (only after the Department receives complete information from the applicant will it consider an advance ruling);
- if any person has made a request for redetermination of the origin or marking determination for identical goods (Revenue Canada will not accept a request for an advance ruling on the same issue until after it has made a decision about the redetermination);
- if the issue is before the Canadian International Trade Tribunal (CITT), the courts, the Free Trade Commission, or any bodies established under these organizations;
- if an advance ruling request covers more than five separate products produced by a single producer; and
- if an advance ruling request solely concerns goods which have already been imported into Canada.

In these circumstances, Revenue Canada will inform the applicant of the reasons why it will not issue an advance ruling.

5. How to request an advance ruling

5.1 Information required

Revenue Canada requires applicants to submit advance ruling requests in writing that contain both the mandatory and the appropriate specific information listed below. If the applicant does not provide all the necessary information, Revenue Canada will either be delayed in issuing the advance ruling, or will reject the request.

5.1.1 Mandatory information

Revenue Canada publishes Form B227, *Request for Advance Ruling or for an Appeal of an Advance Ruling*, on which applicants can provide all the mandatory information the Department needs (see paragraph 10, "Additional information"). This information helps the Department define the type of questions applicants are presenting for a ruling. Although using Form B227 is not mandatory, the Department suggests that applicants submit it to expedite the processing of the advance ruling. If applicants do not want to use this form, they can provide the following information in a letter:

- name, address, class of the applicant (the classes are outlined in paragraph 3, "Eligible applicants"), and importer number(s), if applicable;
- full name and address of the applicant's client, if the applicant is acting as an agent of an importer, producer, or exporter;
- the name, telephone number, and fax number of a person that Revenue Canada can contact if it needs additional information to process the application;
- the importer's name and address, if known (if not, identify the Revenue Canada regional office that serves the area of Canada where the applicant ships goods, or the area where most of the applicant's Canadian customers are located);
- the issue on which the applicant is seeking a ruling (be as specific as possible - the applicant can include an opinion as to what the ruling should be, along with the reasoning for this conclusion);
- a statement explaining the appeal status of the goods to the applicant's knowledge (i.e., either that the issue is not being appealed before any NAFTA customs administration, court, or administrative tribunal, or that an appeal is under way, plus a description of its nature);
- a statement that, to the applicant's knowledge, the facts and circumstances described in the letter and any attachments are accurate, and all the relevant information has been provided; and
- a statement about whether the applicant has previously requested advice or a ruling on this issue from Revenue Canada, or from the customs administration of another NAFTA country and, if so, the result of that previous request.

5.1.2 Specific information

In addition to the mandatory information, applicants must provide Revenue Canada with **all** the information they consider relevant to the request.

Depending on the question they are asking in the request for an advance ruling, this information might include the following:

- a complete description of the good to be imported into Canada, including the harmonized system tariff classification number;
- a summary of the processing steps and the materials needed to produce the good;
- the specific location where each step in the processing took place;
- the harmonized system tariff classification number for, and a description of, any material that crossed over the Mexico-U.S. border, or that was imported into Canada, Mexico, or the U.S. from any other country at any stage in the production process;

- a description of any good obtained in Canada, Mexico, or the U.S. from a supplier who has not given the applicant written confirmation that it is an originating good;
- if any materials or subassemblies undergo joint processing in Mexico and the U.S., their value at each time they cross the Mexico-U.S. border (this is only required if it necessary to determine which of the NAFTA tariff treatments would apply); and
- if the good is subject to an RVC requirement:
 - the transaction value of the good exported to Canada adjusted to a free-on-board (F.O.B.) basis;
 - the value of all materials that do not originate in Canada, Mexico, or the U.S.;
 - the value of all materials obtained from a supplier who has not given the applicant written confirmation that the material is an originating material; and
 - the value of all materials that are of unknown origin.

The above list is only illustrative of the type of information Revenue Canada may need to make an advance ruling.

5.2 Additional information required

If Revenue Canada needs additional information from applicants during its evaluation of the advance ruling request, it will notify the applicants and allow them 30 calendar days from the day of the notice to provide the necessary information. If the Department does not receive a response within the allotted time period, it will treat the request as withdrawn.

5.3 Addressing the request

Applicants should send advance ruling requests by registered mail to the Chief, Rulings and Appeals, Trade Administration Division, of a Revenue Canada regional office. If applicants have an office located in Canada, they should send their requests to the regional office that serves that area. If applicants do not have a Canadian office, they should send their requests to the regional office that serves the area where the importations will occur, or where most of the importers or potential importers of the good are located.

Applicant should mark the request letter "Attention: Advance Ruling Request."

5.4 Language

Applicants must present all advance ruling requests in English or French. Form B227 is available in either language.

5.5 Time of processing

Revenue Canada issues advance rulings within 120 days of receiving all necessary information. If the Department does not receive all necessary information with the application, it will request further information and the 120-day period will begin as soon as the Department receives a satisfactory response. Therefore, it is important that applicants provide **all** the relevant material facts and circumstances in their requests.

If applicants submit requests with complete information less than 120 days before the importation at issue, Revenue Canada cannot guarantee that it can issue an advance ruling before the importation occurs.

5.6 Validity of ruling

An advance ruling is valid from its effective date - usually the date of issue - to the date, if any, when the circumstances under which the ruling was made change. When this happens, Revenue Canada can modify or revoke a ruling that no longer applies (see paragraph 7, "Modifications and revocations").

In most cases, any modification or revocation Revenue Canada makes only affects importations that occur after the date the Department modifies or revokes the ruling. Revenue Canada will only modify or revoke the ruling retroactively in certain limited circumstances, such as when the person to whom the advance ruling is issued has not acted according to the terms and conditions of the ruling.

Revenue Canada will postpone the effective date of a modification or revocation of the ruling for up to 90 days, if applicants relied in good faith on the original ruling to their detriment. Applicants must write to the trade administration officer who issued the modification or revocation to request this extension.

5.7 Goods covered by a ruling

Once it issues an advance ruling, Revenue Canada assigns a number to the ruling, which is called an **advance ruling number**. Applicants can note their advance ruling number on the *Certificate of Origin*, the Revenue Canada customs invoice, or in the description field on the B3 accounting document. With this number, Revenue Canada officers can find and read the ruling in their computer system.

Documenting the advance ruling number is important, since it ensures that Revenue Canada will recognize the imported goods as being covered by an advance ruling.

6. Precedence

An advance ruling will take precedence over any other decisions Revenue Canada has made, such as a National Customs Ruling, advice, or opinion, as long as the ruling, advice, or opinion deals with the identical subject matter covered by the advance ruling.

7. Modifications and revocations

At any time, Revenue Canada can review an advance ruling to establish its continued validity. The circumstances which may prompt the modifying or revoking of an advance ruling include the following:

- the ruling is based on an error of fact or an error in the application of the facts (e.g., tariff classification, regional value content, or qualifying good);
- the ruling is not consistent with the intentions of NAFTA or any modifications made to NAFTA that all parties have agreed to;
- there is a change in the material facts or circumstances on which the ruling is based;
- the exporter or producer has not complied with the terms and conditions of the advance ruling;
- the exporter's or producer's operations are not consistent with the material facts and circumstances on which the advance ruling is based; and
- the values or costs submitted by the applicant for the purpose of obtaining the regional value content were incorrect.

8. Review

If applicants do not receive a favourable advance ruling, they can appeal the advance ruling by requesting a review of the ruling.

In addition, once goods covered by an advance ruling are imported and an unfavourable ruling is applied by Revenue Canada in the form of an origin determination or marking determination of the goods, an importer or person who accounted for the goods, or the person who signed the *Certificate of Origin*, can request a redetermination of either of these subject matters. Whether or not the goods in question have been later imported, the applicant may request a review of the advance ruling within 90 days of Revenue Canada issuing the ruling or, under certain circumstances, within two years of that issuance. For an explanation of these circumstances, see Chapter 7, "Review and Appeal."

Applicants must file all requests for reviews of advance rulings either on Form B227, *Request for Advance Ruling or for an Appeal of an Advance Ruling*, or by submitting a letter quoting the advance ruling number being appealed and providing written arguments to support the appeal. Furthermore, applicants must send all requests for reviews of advance rulings to the Revenue Canada regional office that issued the ruling.

As is the case with the original request, applicants must submit all requests for reviews of advance rulings in English or French, and must sign the request.

After the review is complete, Revenue Canada will either confirm the original advance ruling or will render a retroactive revision or reversal favourable to the applicant.

9. Confidentiality

Any confidential business information contained in a request for an advance ruling or in a request for the review of an advance ruling will remain confidential. Revenue Canada will protect it from any disclosure that could prejudice the competitive position of the applicants providing this information.

10. Additional information

For more information, see the following publications:

- Memorandum D11-4-16, *Advance Rulings*
- Memorandum D11-5-1, *NAFTA Rules of Origin*
- *Revenue Canada Customs NAFTA Advance Rulings Program* guide



Revenue Canada
Customs, Excise and Taxation

Revenu Canada
Accise, Douanes et Impôt

Request for Advance Ruling or for an Appeal of an Advance Ruling
Demande de décision anticipée ou d'appel d'une décision anticipée

1. All applicants complete the following / Tous les demandeurs doivent remplir ce qui suit :		DATE RECEIVED / DATE REÇU
<p>I am or my client is: / Je suis ou mon client est :</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><input type="checkbox"/> An Importer (a Canadian person importing goods) Un importateur (un Canadien qui importe des marchandises)</p> <p><input type="checkbox"/> A Producer (the producer in the final form of the goods in question) Un fabricant (le fabricant des marchandises en question, sous forme finale)</p> <p><input type="checkbox"/> An Exporter (a person exporting goods to Canada who is not the producer of those goods) Un exportateur (une personne qui exporte les marchandises au Canada, sans en être le fabricant)</p> </div> <div style="width: 50%;"></div> </div>		
<p>Name and address of the applicant and the applicant's client, if applicable / Nom et adresse du demandeur et de son client, s'il y a lieu.</p> <hr/> <hr/>		
<p>Brief description of the issue and the goods (e.g.: the origin of a computer) / Brève description de la question et de la marchandise (par exemple l'origine d'un ordinateur)</p> <hr/>		
2. Persons applying for an advance ruling appeal, please complete the following / Les personnes qui interjettent un appel d'une décision anticipée doivent remplir ce qui suit :		
<p>This is an application for an appeal of an advance ruling issued to me or my client. I have attached a copy of the ruling issued to me or my client and all other information required for the appeal. One ruling only may be appealed per application.</p> <p>Il s'agit d'un appel interjeté à l'égard d'une décision anticipée émise à moi ou à mon client. J'ai annexé une copie de la décision qui m'a été émise ou qui a été émise à mon client ainsi que tous les renseignements requis pour l'appel. Une seule décision peut faire l'objet d'un appel par demande.</p>		
<p>Advance ruling number being appealed / Numéro de la décision anticipée visée par l'appel : _____</p>		
3. All applicants must attach a supporting letter and any other information required by Memorandum D11-4-16. Tous les demandeurs doivent annexer une lettre à l'appui ainsi que tout autre renseignement requis selon le memorandum D11-4-16.		
4. All applicants complete the following / Tous les demandeurs doivent remplir ce qui suit :		
<p>To the applicant's knowledge, is the issue contained in the request currently the subject of any appeal before a Customs administration, the courts or any administrative tribunal of Canada or any other NAFTA country? If yes, provide details.</p> <p>À la connaissance du demandeur, est-ce que la question contenue dans la demande fait présentement l'objet d'un appel devant une administration douanière, les tribunaux ou tout tribunal administratif du Canada ou d'un autre pays signataire de L'ALÉNA? Si oui, veuillez donner des détails.</p>		<input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non
<p>Has the applicant previously requested advice or a ruling on this issue (other than any ruling being appealed on this application) from the Department or from the Customs administration of another NAFTA country? If yes, provide details.</p> <p>Est-ce que le demandeur a déjà demandé un avis ou une décision à cet égard (autre qu'une décision qui fait l'objet d'un appel par la présente demande) du Ministère ou de l'administration douanière d'un pays signataire de L'ALÉNA? Si oui, veuillez donner des détails.</p>		<input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non
<p>To the applicant's knowledge, the facts and circumstances described in the letter and any attachments are accurate and all information considered to be relevant to the application has been provided.</p> <p>À la connaissance du demandeur, les faits et les circonstances décrits dans cette lettre et dans les documents annexés sont exacts et toute l'information jugée utile à la demande a été fournie.</p>		
<p>_____ Signature of Applicant / Signature du demandeur</p>		<p>Phone No. / N° de tél. _____ Fax No. / N° de télécopieur _____</p> <p>Phone and Fax No. of Signatory / N° de téléphone et de télécopieur du signataire</p>
<p>_____ Print Name of Signatory / Nom du signataire (lettres moulées)</p>		<p>_____ Title of Signatory / Titre du signataire</p>

Chapter 4: Entry

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Chapter 4: Entry

1. Introduction

Existing accounting procedures in Canada will not change as a result of NAFTA, with the exception of the country-of-origin element. Importers must provide the country of origin before Revenue Canada can release any shipments into Canada. Importers continue to have access to all release and accounting options that are currently available.

2. Purpose

This chapter outlines the changes to invoice requirements as a result of NAFTA. Refer to Chapter 1 for details on the *Certificate of Origin*.

3. Persons affected

When accounting for commercial goods, importers must include an invoice acceptable to Revenue Canada in the accounting documentation package. Mexican or United States exporters are asked to provide the relevant information.

4. Revenue Canada B3 accounting document

4.1 Preferential tariff treatment

To claim preferential tariff treatment under NAFTA, importers have to make a written declaration of the goods' origin by completing field 14 of Revenue Canada's Form B3, *Canada Customs Coding Form*. Importers must enter the appropriate code for tariff treatment.

There are three NAFTA tariff treatments:

- the United States Tariff Treatment (UST), code 10;
- the Mexico Tariff Treatment (MX), code 11; and
- the Mexico-United States Tariff Treatment (MUST), code 12.

Importers or owners can only claim these tariff treatments in two circumstances:

- when they make a declaration that the imported goods originate from the U.S. or Mexico, and that the importer or owner possesses a valid NAFTA *Certificate of Origin* that covers the goods being imported (see Chapter 1: Certification); or
- when they are importing certain non-originating textile goods under a tariff preference level, and they have a statement certifying that the goods meet the conditions set out in the *Textile and Apparel Extension of Benefit Order* and an import permit from the Department of Foreign Affairs and International Trade. For more information on import permits, contact:

Export and Import Permits Bureau
Department of Foreign Affairs and International Trade
P.O. Box 481, Station A
Ottawa ON K1N 9K6
Telephone: (613) 996-3711
Fax: (613) 995-5137

4.2 Special authority

When an order-in-council or the *Customs Tariff* authorizes importers to import goods under special conditions (i.e., relief of duties), they have to show the authority number in the appropriate field of Form B3.

The benefits of the United States Tariff Treatment and the Mexico Tariff Treatment, according to the *Textile and Apparel Extension of Benefit Order*, can be extended to certain textile and apparel goods that are cut, sewn, woven, or knit in the United States or Mexico from fabric, yarn, or fibre produced or obtained in a non-NAFTA country.

When importers present accounting documents for such goods, the special authority number must appear in field 26 of Form B3. If an order-in-council applies to these goods, importers would use the number for that order instead of the special authority number.

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5. *Certificate of Origin*

To claim preferential tariff treatment, importers must have the *Certificate of Origin* in their possession at the time of the declaration. Although they do not have to present the certificate at that time, it must be available to present to Revenue Canada on request.

For more information, see Chapter 1: Certification.

6. Low-value commercial importation

To claim NAFTA preferential tariff treatment on commercial importations worth less than CAN\$1,600, importers must have a certification statement, either included in the invoice or attached to it.

7. Customs Commercial System

The Customs Commercial System is one of the largest, most complex, and most technologically advanced mainframe systems in the Canadian government today. Most commercial shipments, regardless of what release option the importer chooses, are processed through the Customs Commercial System.

One of the system's major roles is to provide automated profile information on both importers and commodities. The system also:

- provides time-limit controls;
- gives transaction information;
- monitors security;
- handles enquiries;
- alerts customs inspectors to sanctions;
- captures data; and
- processes information for other government agencies.

In 1995, the Customs Commercial System is more service-oriented than ever. New systems allow electronic arrival notification and electronic release notification between Revenue Canada and its clients. The Department now electronically receives 83% of its confirming documentation through the Customs Automated Data Exchange (CADEX) and the Customs Declaration (CUSDEC) systems. The CADEX system uses a departmental proprietary message standard, and CUSDEC uses the UN/EDIFACT international standard for electronic data interchange, which the Customs Co-operative Council has adopted.

8. Additional information

For more information, see the following publications:

- Memorandum D1-4-1, *Invoicing Requirements of Canada Customs*
- Memorandum D11-4-19, *Regulations Respecting the Determination of When Goods are Entitled to the Benefit of the United States Tariff, Mexico Tariff or Mexico-United States Tariff*
- Memorandum D17-1-0, *Accounting of Imported Goods and Payment of Duties Regulations*
- Memorandum D17-1-1, *Documentation Requirements for Commercial Shipments*
- Memorandum D17-1-2, *Low Value Commercial Goods*
- Memorandum D17-1-5, *Release of Commercial Goods*
- Memorandum D17-1-10, *Coding of Customs Accounting Documents*
- *Line Release - A Customs 2000 Initiative guide*
- *Importing Commercial Goods into Canada* pamphlet

Chapter 5: Post-Importation Claims and Corrections

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Chapter 5: Post-Importation Claims and Corrections

1. Introduction

In some cases, importers bringing goods into Canada from a NAFTA country may determine that they have overpaid or underpaid duties on the goods. To ensure that they have paid the correct amount of duties, importers or owners of the goods can make post-importation claims and corrections.

Post-importation claims occur when importers apply for a refund of the duties they paid for goods imported from a NAFTA country, when they did not claim NAFTA preferential tariff treatment at the time of accounting. For more details on the legislative provision that covers NAFTA refunds, see paragraph 74(1)(c.1) of the *Customs Act*.

NAFTA provides for post-importation corrections to allow importers or owners of goods who think the original declaration of origin is incorrect to notify Revenue Canada of the error without penalty. For details, see section 32.2 of the *Customs Act*.

2. Purpose

This chapter outlines the procedures that importers or owners of the goods should follow to make post-importation claims or corrections.

3. Persons affected

Only importers located in Canada can make post-importation claims requesting a refund of duties. Importers or owners of the goods can make post-importation corrections.

4. NAFTA not claimed at the time of import

4.1 General

When importers do not make their claims for NAFTA preferential tariff treatment at the time of accounting, they can request NAFTA preferential tariff treatment up to one year after the date on which the accounting for the goods was made. Importers may not have made a claim because they did not have a *Certificate of Origin*, or because they were not aware that the goods qualified for preferential treatment.

4.2 Filing procedures

Importers must file the request on Form B2, *Canada Customs - Adjustment Request*, quoting paragraph 74(1)(c.1) of the *Customs Act*. The importers should state in the explanation field that "NAFTA is applicable but was not claimed at the time of accounting" (or similar words). The importers should attach a copy of the *Certificate of Origin* or, in the case of low-value shipments, an exporter's statement certifying the origin of the goods to support their refund request (see Chapter 1 for details).

If the goods are imported by mail, importers can file the request at any Revenue Canada customs office. In all other cases, importers must file the request at the customs office in the region where the goods were released.

5. Corrections

5.1 General

If exporters and producers discover that they made a mistake when they determined the origin of their goods or when they completed a *Certificate of Origin*, they must immediately notify every person who possesses a copy of that certificate and supply them with corrected copies. If the mistake does not affect the tariff treatment claimed on any goods, Revenue Canada does not need to be notified. If the discovered mistake disqualifies any goods for which a preferential tariff treatment has already been claimed, importers must submit a corrected declaration and pay any additional duties and taxes owing.

Importers must also notify Revenue Canada and make corrected declarations no later than 90 days after they have reason to believe a certificate is incorrect, regardless of whether or not the exporter notifies them.

5.2 Filing procedures

Importers must make the corrections on Form B2, *Canada Customs - Adjustment Request*. For goods imported other than by mail, importers must send Form B2 by registered mail or deliver it by hand to the appropriate regional customs office, or to any customs office in the region where the goods were released. For goods imported by mail, importers can present requests by hand or send them by registered mail to any customs office in Canada.

Any money importers owe to the Department should accompany the corrections to the origin declaration. A designated officer will review such requests, and will send a decision (including a statement of any additional amount owing) to the importer.

5.3 Interest

Revenue Canada will calculate interest, at the prescribed rate of interest, on a request for a correction to a declaration of origin that importers make within the time limit. The interest will be calculated from the first day after the day the person became liable to pay the amount, to the day the amount has been paid in full, and will be calculated on the outstanding balance of the amount that would have otherwise been payable.

5.4 Penalties

If importers find that they made a mistake or incorrectly claimed a NAFTA preferential tariff treatment, make a corrected declaration within 90 days, and pay the additional money owing, they will not be subject to any penalties. If they do not tell Revenue Canada that they owe additional duties and taxes, and the Department later determines that the claim was incorrect, the Department will collect the money and will consider whether to apply penalties or, in extreme cases, whether to pursue prosecution.

Exporters who provide information on a *Certificate of Origin* that is not true or cannot be substantiated may be subject to penalties in their country. When exporters intentionally make deceptive statements on a *Certificate of Origin*, the customs administration of the exporting country will pursue prosecution of the exporter at Revenue Canada's request.

6. Additional information

For more information, see the following publications:

- Memorandum D6-2-2, *Refund of Duties*
- Memorandum D11-4-21, *Correction to the Declaration of Origin*

Chapter 6: Origin Verification and Determination

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Chapter 6: Origin Verification and Determination

1. Introduction

In article 506 of NAFTA, the United States and Mexico have agreed to give Revenue Canada officials the right to examine the books and records of U.S. and Mexican exporters to verify the origin of goods. Canada gives U.S. and Mexican customs officials the same rights with respect to Canadian exporters.

Revenue Canada officials receive their legal authority to conduct these verifications from the *Customs Act* (section 42.1). For more information, see the *Verification of Origin Regulations* and the *Tariff Preference Regulations*, which state what the officials can do, when they can do it, and what action they can take if an exporter decides not to co-operate with them. The procedures are designed to ensure that exporters receive consistent and predictable treatment from Revenue Canada officials.

This chapter is divided into two sections:

- Section A: Questionnaires and verification letters
- Section B: Verification visits and audits

Section A: Questionnaires and verification letters

2. Purpose

This section of Chapter 6 deals with the process Revenue Canada follows to verify the origin of goods through letters and questionnaires.

3. Persons affected

Revenue Canada may contact Mexican or U.S. exporters or producers who have signed a *Certificate of Origin* to verify that the products exported to Canada do qualify as originating under NAFTA. Revenue Canada will notify the importers that the origin of the goods is under review.

4. Objective

With a questionnaire or verification letter, Revenue Canada can verify whether:

- goods imported into Canada from Mexico or the U.S. qualify as NAFTA originating goods;
- the goods originate in Mexico, the U.S., or are produced jointly by the two countries, according to the *NAFTA Tariff Preference Regulations*; and
- certain agricultural goods are **qualifying goods** for the purposes of NAFTA.

5. Scope of origin verification through questionnaires or letters

5.1 Type of information requested

Revenue Canada will usually send its request for additional information in the form of a letter or a questionnaire. The questionnaires have been designed to help the exporter or producer organize the information Revenue Canada needs.

The requested information is information that the exporter or producer has certified¹ as having been used to determine whether the goods qualify for NAFTA. The exporter or producer agreed to maintain and present this information on request.

Requested information may include:

- a list of materials used to produce the goods;
- identification of the materials as either originating or non-originating (i.e., goods produced in the territory are not necessarily originating);
- the tariff classification of non-originating materials;
- names and addresses of suppliers;
- the transaction value of the good;
- the value of the materials;
- a narrative description of the production process;
- the order and location of all operations; and
- the production cost for the goods.

The information requested will depend on the complexity of the goods and the requirements of the specific rule of origin. If, at any point, exporters or producers have difficulty providing the information requested, they are encouraged to contact the Revenue Canada officer who is reviewing the file.

5.2 Confidentiality

Any information exporters or producers provide to Revenue Canada is treated as strictly confidential. It will not be disclosed to anyone other than government officials responsible for trade administration matters. This commitment was made by all NAFTA countries. Revenue Canada officials are bound to honour this commitment under section 108 of the *Customs Act*.

6. How to verify origin through questionnaires or letters

6.1 Revenue Canada

Revenue Canada will send verification letters or questionnaires to the exporter or producer who signed the *Certificate of Origin*. The letter will identify the goods that are subject to the verification, and will ask the exporter or producer to provide certain information by a specified date. Revenue Canada may send the letter by regular or certified mail.

There are five types of questionnaires, depending on the rule of origin used. The questionnaires are based on the following rules of origin:

- goods wholly obtained or produced in the territory of one or more of the parties;
- goods produced entirely in the territory of one or more of the parties exclusively from originating materials;
- tariff change requirements;
- regional value content - net cost method; and
- regional value content - transaction value method.

By reviewing the *Certificate of Origin*, Revenue Canada officers will attempt to determine which questionnaire is the appropriate one to send to the exporter or producer. However, since verifications are often conducted when the *Certificate of Origin* has been improperly completed, officers may not be able to determine which questionnaire is appropriate until the exporter or producer has provided the information.

In such a situation, Revenue Canada officers will try to acquire some preliminary information by telephone. If they cannot obtain enough preliminary information to determine what further information they require, they may have to send more than one questionnaire to the exporter or producer. Officers may also telephone to determine whether it is necessary for the exporter or producer to complete an entire questionnaire, or only certain sections of it.

At the same time, Revenue Canada officers will search the Department's database of customs entries to identify all Canadian importers of the products under review. They will then notify these importers in writing that a verification is being performed with their supplier. If, during the verification, the officer finds that the products do not satisfy the NAFTA rules of origin, or if the exporter cannot substantiate the *Certificate of Origin*, Revenue Canada will have to collect additional duties and taxes on the affected entries from the importers.

6.2 Receiving a questionnaire or verification letter

All questionnaires are available in English, French, and Spanish.

The questionnaires include instructions on how to complete them. If exporters or producers have questions or difficulties in providing the information that has been requested, they are encouraged to contact the officer who sent the questionnaire to them.

If it is more convenient for exporters or producers to provide the information in a form other than the questionnaire, they can do so. However, they should ensure that they are providing all the information needed to determine whether the goods are eligible for a particular duty rate under NAFTA.

If Revenue Canada finds that the information the exporter or producer provides on the questionnaire or other form is insufficient to verify the origin, officers can request additional information by corresponding or otherwise communicating with the exporter or producer. In some cases, officers may need to examine records or observe production facilities. If such a **verification visit** is necessary, Revenue Canada will arrange it with the consent of the exporter or producer. For more information on verification visits, see Section B of this chapter.

6.3 Failing to respond to a questionnaire or verification letter

The exporter or producer will have at least 30 days to submit a completed questionnaire or to respond to a verification letter. If Revenue Canada does not receive a response by the specified date, the Department will send a second copy of the questionnaire or verification letter, accompanied by a notice of intent to deny the NAFTA preferential tariff treatment and a written statement of rationale.

After receiving this second letter, exporters or producers have a further 30 days to forward the requested information. These 30 days will begin:

- on the date the Mexican exporter or producer receives the letter (Revenue Canada will send the second verification letter using a method that produces a confirmation of receipt); or

- for U.S. exporters or producers, on the date that Revenue Canada sends the letter.

If Revenue Canada does not receive any information within the time given, the Department will deny the NAFTA preferential duty rate, and begin collecting additional duties and taxes from all Canadian importers of the goods. In some cases, Revenue Canada will collect the additional duties and taxes retroactively on goods that are already in Canada.

6.4 Written statement

After reviewing the information contained in the completed questionnaire or the information received in response to the verification letter, Revenue Canada will provide a written statement of whether the goods qualify for NAFTA preferential tariff treatment, detailing the findings and legal basis.

When the written statement denies NAFTA preferential tariff treatment, a notice of intent to deny will accompany the statement. This notice is meant to give exporters or producers a final opportunity to provide the requested information before Revenue Canada begins collecting additional duties and taxes from their Canadian customers. If the exporter or producer brings forward the information within the time given in the notice of intent to deny, the Department will review it to determine if the goods qualify for NAFTA preferential tariff treatment.

Revenue Canada will also provide a written statement when it reviews the additional information. This statement would include another notice of intent to deny if the goods still do not qualify for NAFTA benefits.

6.5 Review and appeal

When the origin of the goods has been redetermined and Revenue Canada has denied preferential tariff treatment, the Department will notify both the importer and the person who signed the *Certificate of Origin* (the exporter or the producer). Such redeterminations by Revenue Canada can be appealed by both the importer and the person who signed the *Certificate of Origin*.

See Chapter 7, "Review and Appeal," for more details.

7. Additional information

For more information, see the following publications:

- Memorandum D11-4-20, *Origin Verification Procedures*
- Memorandum D11-4-19, *Regulations Respecting the Determination of When Goods are Entitled to the Benefit of the U.S. Tariff, Mexico Tariff or Mexico-U.S. Tariff*

Section B: Verification visits and audits

2. Purpose

This section of Chapter 6 outlines the procedures for origin verification visits and audits under NAFTA.

3. Persons affected

Revenue Canada may contact Mexican or U.S. exporters or producers who have signed a *Certificate of Origin* to verify that the products exported to Canada qualify as originating under NAFTA. Revenue Canada will notify importers that the origin of the goods is under review.

4. Objective

Verification visits and audits verify whether:

- goods imported into Canada from Mexico or the U.S. qualify as NAFTA originating goods;
- the goods originate in Mexico, the U.S., or are produced jointly by the two countries, according to the *NAFTA Tariff Preference Regulations*; and
- certain agricultural goods are **qualifying goods** for the purposes of NAFTA.

5. Verification visits versus audits

5.1 Verification visits

During a visit, Revenue Canada officers verify the claimed origin of goods. Visits most commonly occur when it is not possible to obtain the full information required to verify the origin of the goods through letters or questionnaires. A visit might also be proposed when Revenue Canada intends to conduct verifications of several companies located in the same area.

Revenue Canada conducts verification visits (as opposed to audits) in cases when the exporter or producer has claimed that:

- the goods are wholly obtained or produced in the territory of one or more of the parties to NAFTA (criterion A on the *Certificate of Origin*);
- the goods are produced entirely from originating materials in the territory of one or more of the parties to NAFTA (criterion C on the *Certificate of Origin*); or

- the specific rule of origin that applies to the goods involves a tariff change, **without** a regional-value-content requirement (criterion B on the *Certificate of Origin*).

Officers conduct verification visits to observe the manufacturing or assembling process, and to review the original books and records of the exporter or producer. The officer may want to see purchase records of materials, inventory management systems, and production records.

5.2 Audits

Revenue Canada conducts origin audits to verify whether a regional-value-content requirement has been met when it is a condition of the specific rule of origin. These audits are performed by the Origin Audits Unit from the Origin Determination Directorate at Revenue Canada Headquarters in Ottawa. When the tariff classification of any of the materials used to produce the goods is at issue, a tariff and values administrator usually accompanies the auditors.

An origin audit involves a detailed examination of:

- all books and records pertaining to the origin, purchase, costs, value of, and payment for all materials used to produce the goods in question;
- inventory management control systems; and
- the process involved to manufacture or assemble the goods in question to the point where they are ready to export to Canada.

All Revenue Canada audits of exporters or producers conform to the *Generally Accepted Auditing Standards* in the country where the exporter or producer is located.

6. Scope of verification visits and audits

6.1 Review period

The period for which exports of goods to Canada are subject to a verification visit typically begins when the exporter or producer was first notified that Revenue Canada intended to verify the origin of the goods, and ends when the visit or audit takes place. This encompasses goods produced during the time Revenue Canada sent any verification letters or questionnaires.

Audits review the origin of goods produced over at least one entire fiscal period of the exporter or producer. Revenue Canada will audit the fiscal period for which the regional-value-content questionnaire was prepared and, if a significant amount of time has elapsed, the current fiscal period.

6.2 Product lines verified

Whenever possible, the scope of verifications has included all models of products the exporter or producer manufactures that are being certified as originating. Many of the companies being visited or audited manufacture several models of the same basic product that are very similar to each other - any minor differences would not affect the origin of the good. The concept of **representativeness** was therefore developed to reduce on-site time by reviewing representative models, rather than all models manufactured and exported to Canada.

The concept of representativeness allows the exporter or producer to complete **one** questionnaire for a specific model within a product line, and to have that model represent the remaining products in the product line. The onus is on the company to prove that the selected model represents the rest of the product line. Revenue Canada may consider a model as representative of a product line if the sourcing of materials, the manufacturing process, and the costs involved in producing the good are similar.

6.3 Suppliers of materials

Often, the origin of goods exported to Canada depends on the origin of one or more key materials used to produce the goods. When this is the case, the exporter or producer must be able to substantiate the origin of the material. If officers or auditors find any materials for which the origin is not substantiated, they will treat the material as non-originating until the exporter or producer obtains certification of its origin from the supplier.

Where the exporter or producer does have information from the supplier of a material that indicates it is an originating material, Revenue Canada may determine that it is necessary to verify the origin of the material. If it undertakes to verify a material supplier, Revenue Canada will follow the same procedures for verifying the origin of a good exported to Canada (i.e., via letter, questionnaire, visit, or audit). Once the origin of the material is verified, the verification of the good exported to Canada can continue. However, the audit unit can also conduct a verification of a supplier who is considered a risk.

6.4 Verification assessment period

If, through the verification, Revenue Canada finds that the goods do not qualify for the preferential tariff treatment claimed by the importer based on the certificate, Revenue Canada will **redetermine** the origin of the goods.

Through redetermination, Revenue Canada collects additional duties and taxes from the Canadian importers. The additional duties and taxes are equal to the difference in applying, to the value of the goods, the preferential rate used at the time of importation versus the non-preferential rate.

All importations made on or after the date the Canadian importers were **first notified**² that the origin of the goods was under review, and for a period not exceeding 90 days before the notification, are subject to redetermination.

The maximum assessment period for most goods is two years before the date of redetermination. The assessment period for the automotive industry could be up to four years if the exporter or producer has chosen to average costs over a period covering exports made before the usual two years.

7. Process for origin verification visits

7.1 Identification of companies for verification visits or audits

Most companies selected for verification visits or audits have already responded to verification letters or questionnaires. If, for one reason or another, officers cannot verify the origin of the goods based on the completed questionnaire alone, they can conduct a visit or an audit. Common reasons why officers might not be able to make a decision based solely on a letter or questionnaire include:

- the goods undergo a complex manufacturing process that the officers may need to observe for themselves;
- the officer may have evidence suggesting that the information provided in response to the letter or questionnaire is not accurate; and
- the origin of key materials is in question.

The Origin Audits Unit receives most of its referrals for audits from tariff and values administrators when a rule of origin includes a regional-value-content requirement and there is a need identified for audit. Reasons for referral of a case to the Origin Audit Unit might include situations where:

- the company has complex accounting systems;
- the amount of regional-value-content is close to the threshold of disqualification; or
- there are issues involving fungible materials or fungible goods (e.g., fungible materials resulting in non-qualifying goods, unless an inventory management system is in existence, or fungible goods where the producer manufactures qualifying goods, but also exports non-qualifying goods).

7.2 Notification of verification visit or audit

Before Revenue Canada officers or auditors visit the premises of an exporter or producer, they must:

- notify the exporter or producer by certified mail of Revenue Canada's intention to conduct a verification visit or audit;
- send a copy of the notification to the appropriate customs administration office in Mexico or the U.S.;
- notify the appropriate country's embassy in Canada, if that country requests that this be the standard procedure; and
- allow the exporter or producer 30 days to respond (if the exporter or producer does not consent to the visit or audit within the 30-day time period, Revenue Canada will send the exporter or producer a notice of intent to deny the NAFTA preferential tariff treatment and a written statement of rationale, which is meant to give the exporter or producer a final opportunity to consent to a visit or audit).

If Revenue Canada does not receive a response within the time given in the notice of intent to deny, the Department will collect additional duties and taxes from the Canadian importers of the goods.

7.3 Preparing for an audit

To ensure that the time spent at the exporter's or producer's premises is well co-ordinated and managed, the audit team completes planning and preparation tasks. These tasks include:

- analysing the response to the regional-value-content questionnaires;
- collecting additional information from the exporter or producer;
- reviewing analysis already done by tariff and value administrators;
- researching reference material to familiarize themselves with standards, trends, and general information on the industry sector; and
- developing an assignment planning memorandum outlining the objectives and scope of the audit to ensure that the time spent at the exporter's premises is well co-ordinated and managed.

7.4 Visiting the site

This phase of the verification visit or audit includes:

- setting up an interview with company officials to explain the objectives of the visit or audit;
- conducting the verification or audit;

- in the case of an audit, preparing audit working papers according to audit standards; and
- holding an interview with company officials to discuss verification or audit findings and their impact on the NAFTA eligibility of the product shipped to Canada.

The length of time required at the premises of the exporter or producer will vary, depending on the complexity of the situation.

7.5 Books and records

If it becomes apparent during a verification visit or audit that an exporter or producer has failed to maintain proper books and records, or if the officers or auditors are denied access to the company's books and records, the visit or audit will be terminated. In such an event, the officer or auditor will provide the exporter or producer with a written statement of intent to deny the preferential NAFTA tariff treatment described in paragraph 7.7, "Written statement."

Record-keeping requirements for importers and exporters vary:

- in Canada, records must be kept for at least six years;
- in Mexico, records must be kept for at least five years; and
- in the U.S., records must be kept for at least five years.

When a producer has failed to maintain books and records according to the *Generally Accepted Accounting Principles* that apply in the country where the producer is located, the producer will be given the opportunity to record its costs according to these principles no later than 60 days after receiving written notification.

7.6 Observers

An exporter or producer subject to a visit is allowed to have two observers present during the visit at the expense of the exporter or producer. The observers are not to participate, only to observe.

The obligation to allow these two observers honours a constitutional commitment in Mexico that grants an individual the right to have two observers present during a government examination. However, Canadian trade administration officers or auditors will not prevent an exporter or producer from inviting any number of observers to the premises during the verification. It is also the opinion of the Canadian government that, if Canadian exporters or producers are being visited or audited by U.S. or Mexican customs officials, the Canadians would have the constitutional freedom to invite any number of observers to their premises in Canada.

In any event, the officers or auditors will not postpone or delay the verification visit or audit if observers are not present.

This observer provision does not mean that an exporter or producer cannot have accountants, lawyers, or other company representatives to assist as required in the verification visit or audit.

7.7 Written statement

Following the visit or audit, Revenue Canada will provide the exporter or producer with a written statement of whether the goods qualify for NAFTA preferential tariff treatment, detailing the findings and legal basis.

When the written statement denies NAFTA preferential tariff treatment, a notice of intent to deny will be included with the statement. This notice gives the exporter or producer a final opportunity to provide any additional information that was not previously available. If the information is brought forward within the time given in the notice of intent to deny, the officer or auditor will review the additional information to determine if the goods qualify for NAFTA preferential tariff treatment. If the exporter or producer does not respond within the time given with the notice of intent to deny, or if the response does not change the outcome of the verification, Revenue Canada will collect additional duties and taxes from the Canadian importers of the goods.

7.8 Review and appeal

When the origin of the goods has been redetermined and Revenue Canada has denied preferential tariff treatment, the Department will notify both the importer and the person who signed the *Certificate of Origin*. Such redeterminations by Revenue Canada can be appealed by both the importer and the person who signed the *Certificate of Origin*.

See Chapter 7, "Review and Appeal," for more details.

8. Additional information

For more information, see the following publications:

- NAFTA Audit Manual
- Memorandum D11-4-20, *Origin Verification Procedures*
- Memorandum D11-4-19, *Regulations Respecting the Determination of When Goods are Entitled to the Benefit of the U.S. Tariff, Mexico Tariff or Mexico-U.S. Tariff*

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- 1 See the exporter or producer's declaration in Chapter 1 of the manual.
 - 2 Because of the amount of time that must be allowed for each of the steps in the verification process, it is not unusual for the assessment period to cover goods that have already been imported into Canada for a year or more.

Chapter 7: Review and Appeal

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Chapter 7: Review and Appeal

1. Introduction

To determine the amount of duty payable on goods imported into Canada, Revenue Canada must make decisions about the tariff classification of the good, its appraised value, and its country of origin. Marking requirements also play a significant role in determining tariffs payable that apply to some agricultural and textile goods.

Canadian legislation gives importers and, in some cases, exporters and producers the right to have these decisions reviewed at both the administrative and judicial levels. A Revenue Canada official performs the review at the administrative level, which is called a **redetermination**. A judicial or quasi-judicial body performs the review at the judicial level, which is called an **appeal**.

2. Purpose

This chapter describes the general redetermination and appeal provisions.

3. Eligible applicants

An importer can request a redetermination of the imported goods concerning:

- tariff classification;
- value appraisal; or
- country of origin.

Because of NAFTA, people who sign *Certificates of Origin* for the goods, namely exporters or producers, can request a redetermination of the origin of goods they import into Canada. However, exporters or producers cannot request a redetermination of the tariff classification or value appraisal.

If the producer and exporter are not the same person, and both people have completed a *Certificate of Origin* for the goods exported to Canada, then either of them, or both of them independently, can file a request for an origin redetermination.

In addition, the person who has signed the *Certificate of Origin* for goods that Revenue Canada has redetermined will be notified of the redetermination.

4. Determinations

4.1 General

An initial decision from Revenue Canada about the appropriate tariff classification, appraised value, and country of origin is called a **determination**. Revenue Canada makes determinations within 30 calendar days of the date the goods are accounted for. A Revenue Canada commodity specialist makes the determination after reviewing the entry and accounting documentation, and any further information the importer may provide.

4.2 Deemed determinations

When Revenue Canada does not make a determination on tariff treatment within 30 calendar days of the date of accounting, a decision will be considered to have been made, and the goods will receive the tariff classification, appraised value, and country of origin claimed on the accounting documents.

If the commodity specialist has initiated a review but cannot complete it within 30 days, a tariff and values administrator (TVA) will complete the case. In such a situation, the review is treated as a redetermination.

5. Redeterminations

5.1 General

If importers do not agree with a determination or appraisal the commodity specialist makes, they can ask the regional tariff and values administrator (TVA) to perform the review and make a redetermination. If the importers do not agree with the TVA's redetermination, they can request a further redetermination from the Deputy Minister of National Revenue (an officer designated by the Deputy Minister will make the actual decision).

Any time importers request a redetermination, they must provide Revenue Canada with what they believe is the correct information, and information that substantiates the change.

A redetermination changes the declared information on the customs entry. Because this information provides the basis for the amount owing, the redetermination often results in Revenue Canada reassessing the duties.

5.2 Refunds

Revenue Canada will grant a refund of duties paid in excess of duties owing in cases when the goods are imported from a NAFTA country, but the importer did not claim the NAFTA preferential tariff on the original importation. For more information, see Chapter 5: Post Importation Claims and Corrections.

5.3 Detailed adjustment statement

If a redetermination (or the initial determination the commodity specialist made) results in a change in the amount of duty payable, Revenue Canada will notify the importer by sending a Detailed Adjustment Statement (DAS). The DAS will include all pertinent information about the goods in question, and will provide a detailed explanation of the change in duties payable.

5.4 Time periods

5.4.1 Redetermination requested by the importer or person who signs the *Certificate of Origin*

If importers or, when applicable, persons signing the *Certificate of Origin* are dissatisfied with a redetermination from the TVA, they can request a further redetermination from the Deputy Minister no later than 90 days after or, when the Minister deems it advisable, no later than one year after the original determination was made. In exceptional cases only, and according to strict criteria, they can request a redetermination up to two years after the original determination was made (see Memorandum D11-6-1, *Determination/Redetermination and Appraisal/Reappraisal of Goods*).

5.4.2 Redetermination initiated by Revenue Canada

Revenue Canada can also initiate a redetermination. This is significant, since most importations are subject to a deemed determination because the large volume of importations does not allow for the commodity specialist's review within the allotted 30 days. As a result, many redeterminations are undertaken by tariff and values administrators.

The time period in which Revenue Canada can initiate a redetermination depends on the circumstances. Generally, a tariff and values administrator can make a redetermination within 90 days. However, when it was not possible for commodity specialists to make an initial determination because of insufficient information, they can make the redetermination within two years.

When the redetermination is requested based on an audit or an origin verification, the redetermination can occur up to two years after the initial determination was made. In the case of a redetermination resulting from an origin verification because the producer made an election to average, Revenue Canada can make the redetermination within four years of the initial determination.

The Deputy Minister can make a redetermination on his or her own initiative within two years of the time the initial determination was made, or within a longer period under certain circumstances.

6. Procedures for redetermination

6.1 Security

Importers who request a redetermination must first pay all amounts owing as duties, or post security satisfactory to the Minister, within 30 days of a determination. Importers can post security instead of actually paying duties owing, if they request a further redetermination, or if they file an appeal to the Canadian International Trade Tribunal.

6.2 Where to apply

The importer, or the person who signed a *Certificate of Origin*, should submit an application containing a single request for redetermination to the customs region where the goods were imported. If the person who signed a *Certificate of Origin* files an application which contains requests for the redetermination of more than one importation, and if the importations involved have been made in more than one customs region, then the application should be submitted to the customs regions where most of the importations were made.

6.3 Documentation required

Importers should request redeterminations using Form B2, *Canada Customs - Adjustment Request*. They should provide two completed copies (three copies where security is being posted) in either English or French. A person who has signed and completed a *Certificate of Origin* should use Form B226, *Request(s) for Redetermination of the Origin of Goods Imported from a NAFTA Country*.

6.4 Redeterminations of origin

6.4.1 Precedence

If Revenue Canada receives requests for redetermination of the origin of goods involving the same issue from both the person who completed and signed the *Certificate of Origin* and the importer, the Department will process one application first, and then will process the other based on the results of the first. If one of the redetermination requests is made to the Deputy Minister, then Revenue Canada will process that request first. The Department can use any information supplied in either redetermination request to make its decisions on both redetermination requests.

6.4.2 Multiple entries

A single application an exporter or producer makes can contain multiple requests for the redetermination of the origin of goods imported under different transaction and line numbers, if all the requests involve the same product. If this condition is satisfied, and the application contains redetermination requests at both levels, the Department will process the requests made to the Deputy Minister first.

Revenue Canada may accept applications involving redeterminations of multiple importations that involve related products that are part of a single product line, if the origin information submitted tends to show that a decision on one model of the product line is representative of decisions on all models. The customs region handling the case will decide whether or not to accept this type of application.

7. Advance ruling

Instead of requesting a redetermination of the origin or the country-of-origin marking of the goods, the importer or person who completed and signed a *Certificate of Origin* for the goods can choose to submit a request for an advance ruling. Revenue Canada will then make an advance ruling, and will honour it for importations of goods that occur after the Department issues the advance ruling. An advance ruling is not a redetermination, and therefore will not result in the refund of any money due to importers for past importations. A request for a review of an advance ruling can be made to the Deputy Minister. For more information on the advance ruling program, consult Memorandum D11-4-16, *Advance Rulings*.

8. Appeals to the Canadian International Trade Tribunal (CITT)

If importers, exporters, or producers are dissatisfied with a redetermination the Deputy Minister made, they can file an appeal to the Canadian International Trade Tribunal (CITT). To file an appeal, they can file a notice of appeal in writing to the Deputy Minister and the Secretary of the CITT no later than 90 days after the date the Deputy Minister's notice of the redetermination was given. They should send the notice of appeal to:

Deputy Minister of National Revenue
123 Slater Street
Ottawa ON K1A 0L8

or

Secretary
The Canadian International Trade Tribunal
Journal Tower South, 21st Floor
365 Laurier Avenue West
Ottawa ON K1A 0G7

Facsimile: (613) 990-2439

9. Federal court

The Federal Court will accept appeals of CITT decisions on any question of law within 90 days.

10. Additional information

For more information, see the following publications:

- Memorandum D11-6-1, *Determination/Redetermination and Appraisal/Reappraisal of Goods*
- Memorandum D11-4-17, *NAFTA Origin Redetermination Requests filed by the Person who Completed and Signed the Certificate of Origin*
- *Revenue Canada Customs NAFTA Origin Redetermination Requests by Exporters or Producers guide*



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

CANADA CUSTOMS — ADJUSTMENT REQUEST
DOUANES CANADA — DEMANDE DE RAJUSTEMENT

PROTECTED (WHEN COMPLETED)
PROTÉGÉ (UNE FOIS REMPLI)

1 IMPORTER NAME AND ADDRESS NOM ET ADRESSE DE L'IMPORTATEUR		2 TRANSACTION NO N° DE TRANSACTION	
3 POSTAL/ZIP CODE CODE POSTAL		4 PAGE OF DE	
9 SUB-HDR NO / N° DE SOUS EN TÊTE	10 MAIL TO / POSTER A	5 OFFICE NO N° DE BUREAU	6 ORIGINAL TRANSACTION NO N° DE LA TRANSACTION ORIGINALE
		7 Y / A	8 DATE RECEIVED / DATE REÇUE
		11 SECURITY NO / N° DE SÉCURITÉ	
		12 COUNTRY OF ORIGIN PAYS D'ORIGINE	13 PLACE OF EXPORT LIEU D'EXPORTATION
		14 TARIFF TREATMENT TRAITEMENT TARIFAIRE	
15 DIRECT SHIPMENT DATE DATE D'EXPÉDITION DIRECTE		16 CTRY CODE CODE DEVISE	17 TIME LIMIT / DÉLAI
18 POSTAL/ZIP CODE CODE POSTAL			

18 LINE LIGNE	19 DESCRIPTION — AS ACCOUNTED FOR DÉSIGNATION — SELON LA DÉCLARATION	20 SPECIAL AUTHORITY AUTORISATION SPÉCIALE
21 CLASSIFICATION NO N° DE CLASSEMENT	22 TARIFF CD CD TARIF	23 QUANTITY QUANTITÉ
24 U/M	25 VFD CD CD VD	26 SIMA CD CD LMSI
27 CUSTOMS DUTY RATE TAUX — DROIT DE DOUANE	28 E.T. RATE TAUX T.A.	29 GST RATE TAUX TPS
30 VALUE FOR CURRENCY CONVERSION CONVERSION VALEUR POUR CHANGE	31 VALUE FOR DUTY VALEUR EN DOUANE	32 CUSTOMS DUTIES DROITS DE DOUANE
33 SIMA ASSESSMENT COTISATION DE LMSI	34 EXCISE TAX TAUX D'ACCISE	35 VALUE FOR TAX VALEUR POUR TAXE
36 GST TPS		

18 LINE LIGNE	19 DESCRIPTION — AS CLAIMED DÉSIGNATION — SELON LA DEMANDE	20 SPECIAL AUTHORITY AUTORISATION SPÉCIALE
21 CLASSIFICATION NO N° DE CLASSEMENT	22 TARIFF CD CD TARIF	23 QUANTITY QUANTITÉ
24 U/M	25 VFD CD CD VD	26 SIMA CD CD LMSI
27 CUSTOMS DUTY RATE TAUX — DROIT DE DOUANE	28 E.T. RATE TAUX T.A.	29 GST RATE TAUX TPS
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18 LINE LIGNE	19 DESCRIPTION — AS CLAIMED DÉSIGNATION — SELON LA DEMANDE	20 SPECIAL AUTHORITY AUTORISATION SPÉCIALE
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33 SIMA ASSESSMENT COTISATION DE LMSI	34 EXCISE TAX TAUX D'ACCISE	35 VALUE FOR TAX VALEUR POUR TAXE
36 GST TPS		

37 DOCS ATTACHED C-JOINTS	JUSTIFICATION FOR REQUEST / JUSTIFICATION DE LA DEMANDE
A LINE	UNDER EN VERTU DE
(TYPE OF REQUEST / GENRE DE DEMANDE)	
(LEGISLATIVE REFERENCE / RÉFÉRENCE LÉGISLATIVE)	
EXPLANATION / EXPLICATION :	
DECLARATION / DÉCLARATION	
I, JE	OF DE
PLEASE PRINT NAME / LETTRES MOULÉES S.V.P.	
IMPORTER - AGENT / IMPORTATEUR - AGENT	
DECLARE THE PARTICULARS OF THIS DOCUMENT TO BE TRUE ACCURATE AND COMPLETE / DÉCLARE QUE LES RENSEIGNEMENTS CI DESSUS SONT VRAIS ET COMPLETS	
DATE	SIGNATURE

38	CUSTOMS DUTIES DROITS DE DOUANE
39	SIMA ASSESSMENT COTISATION DE LMSI
40	EXCISE TAX TAUX D'ACCISE
41	SUB TOTAL TOTAL PARTIEL
42	GST TPS
43	INTEREST INTÉRÊT
44	AMOUNT DUE RECEIVER GENERAL FOR CANADA TOTAL DU AU RECEVEUR GÉNÉRAL DU CANADA
45	AMOUNT DUE CLAIMANT TOTAL DU AU REQUÉRANT

DEPARTMENT OF NATIONAL REVENUE — CUSTOMS AND EXCISE

Canada

MINISTÈRE DU REVENU NATIONAL — DOUANES ET ACCISE

Chapter 8: Drawback and Duty Deferral

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Chapter 8: Drawback and Duty Deferral

Revenue Canada provides programs that can be used to reduce or eliminate customs duties on goods imported from NAFTA countries. This chapter focuses on two types of programs:

- Section A: Drawback
- Section B: Duty deferral

Section A: Drawback

1. Introduction

Drawback occurs when Revenue Canada returns the duty amount at the time of importation into Canada if certain conditions have been met (i.e., manufacturing in Canada or subsequent exportation from Canada). There are two basic types of drawback programs:

- i) the **Export Program**, which is broken down further into:
 - the Same Condition Program; and
 - the Manufacturing Program; and
- ii) the **Home Consumption Program**.

The Same Condition Program pays a drawback of the duties paid on unused goods exported from Canada in the same condition as the goods were imported. The Manufacturing Program pays a drawback of the duties paid on imported material incorporated into Canadian manufactured goods and later exported. Also, under this program, claimants can obtain drawback in cases where they did not use the imported goods to produce the exported products. Instead, they used the imported goods to produce goods for the domestic market, and they use similar goods to produce the exported products. Finally, the Home Consumption Program pays users of the goods a drawback of the duties they paid on certain imported goods they use for specific purposes in Canada for home consumption.

For goods exported to the United States, the drawback programs were scheduled to be eliminated under the Canada-U.S. Free Trade Agreement (FTA) on January 1, 1994. However, under NAFTA, the programs were extended with minor changes until January 1, 1996. After that date, in general, goods exported to the U.S. will no longer be eligible for full drawback. The same restriction applies to exports to

Mexico on and after January 1, 2001. However, NAFTA lists a number of exceptions to these restrictions on exports to either the U.S. or Mexico on or after the specified dates.

For full details on Canada's drawback programs, see sections 82 to 87 of the *Customs Act* (Export Program), and sections 69 to 72 of the *Customs Tariff* (Home Consumption Program).

2. Purpose

This section outlines Revenue Canada's drawback programs under NAFTA.

3. Persons affected

The types of persons who can claim drawback of duties they paid depends on the type of program. In all cases, the claimant must be located in Canada.

Under the Same Condition Program, the importer or exporter of the goods imported into Canada and later exported can claim drawback.

Under the Manufacturing Program, the following persons can claim drawback:

- in the case of distilled spirits, the manufacturer or producer of the exported distilled spirits; or
- the exporter, manufacturer, or producer of the goods later exported.

Under the Home Consumption Program, persons who used certain goods, such as some steel and textile products for consumption in Canada, can claim drawback. Persons who want to use this program should contact the Revenue Canada regional office in their area.

4. Procedures

During the continuation period of Canada's drawback programs for goods exported to the U.S. or Mexico, NAFTA presents only minor changes to these programs. These changes affect procedures which persons need to follow when claiming drawback of duties they paid.

NAFTA requires new documentation from claimants under the drawback programs. It is important, however, to remember that claimants must still follow these procedures:

- they must apply for a drawback on Form K32 or K32-1, *Drawback Claim*, no later than four years after they paid the duties on the imported materials or goods; and

- they have to include import documentation, production statements, export analyses, and sales and shipping documentation with the application.

As well as following the above procedures, claimants must, according to NAFTA, present proof of the amount of duties they paid when importing the goods or materials into the other NAFTA country.

5. Full and partial drawback

On and after the completion dates of the drawback programs (January 1, 1996, for the U.S., and January 1, 2001, for Mexico), the refund of duties for certain goods exported to the U.S. and Mexico will be reduced. However, NAFTA provides exemptions for certain other goods. This means that these goods will receive full refund of duties when exported to the U.S. or Mexico.

5.1 Full drawback

The following exemptions apply to those goods exported to the U.S. or Mexico on and after the completion dates.

Same-condition goods

Special exportations

Revenue Canada will pay full drawback on goods exported because of:

- delivery to a duty-free shop;
- delivery for ship's stores or supplies for ships or aircraft; or
- delivery for use in joint undertakings of two or more NAFTA countries that will later become the property of the country where the goods were exported.

Originating goods

Revenue Canada will pay full drawback on goods originating in the U.S. or Mexico and exported to the U.S. or Mexico.

There are also a number of exemptions that apply only to Canada-U.S. trade. Revenue Canada will pay full drawback on goods exported under the Same-Condition Drawback Program. (In addition, the definition of what is considered to be **same condition** will be broadened to include such processes as testing, cleaning, repacking, and preserving.)

Imported citrus products

Revenue Canada will pay full drawback on imported citrus products when they are incorporated into products exported to the U.S.

Certain imported materials

- Revenue Canada will pay full drawback on imported materials used to produce quilted cotton or man-made piece goods or furniture moving pads that are subject to the most-favoured-nation (MFN) duty rate when exported to the U.S.
- Revenue Canada will pay full drawback on imported materials used to produce wearing apparel that is subject to the MFN duty rate when exported to the U.S.

5.2 Partial drawback

Goods not covered under the exemptions for full drawback in section 5.1 will be eligible for partial drawback on and after the specified completion dates. Revenue Canada will base the amount of drawback that it will pay on either the total amount of duties paid on the material inputs imported into Canada and used to manufacture the good, or the total amount of duties paid on the manufactured good when exported to the U.S. or Mexico, whichever amount is less.

6. Additional information

For more information, see the following publications:

- Memorandum D7-2-1, *Home Consumption Drawbacks*
- Memorandum D7-3-4, *Canadian Manufactured Goods Exported Drawback Regulations*
- Memorandum D7-3-5, *Goods Imported and Exported Drawback Regulations*

Section B: Duty Deferral

1. Introduction

Duty deferral, also called inward processing (IP), is relief from the payment of customs duties on goods imported to be used in, wrought into, or attached to goods produced in Canada for export. This program also covers imported materials, other than fuel or plant equipment, directly consumed or expended to process goods in Canada for export. The IP program provides similar relief from customs duties as is available through export drawbacks, but allows the processor to post security rather than pay the customs duties and file for a drawback after exportation.

For goods exported to the United States, the duty deferral program, as with the drawback programs, was scheduled to be eliminated under the Canada-U.S. Free Trade Agreement (FTA) on January 1, 1994. However, under NAFTA, the program was extended with minor changes until January 1, 1996. After that date, in general, goods exported to the U.S. will no longer be eligible for full relief. The same restriction applies to exports to Mexico on and after January 1, 2001. However, NAFTA lists a number of exceptions to these restrictions on exports to either Mexico or the U.S. after the specified dates.

You will find the legislation pertaining to duty deferral in sections 80 to 83 of the *Customs Tariff*.

2. Purpose

This section outlines Revenue Canada's duty deferral program under NAFTA.

3. Persons affected

For NAFTA purposes, persons who can claim relief of duties under the duty deferral program are those producers in Canada who either:

- have an export agreement with importers in the U.S. or Mexico for specific goods; or
- have established a pattern of past export sales with importers in the U.S. or Mexico.

4. Procedures

During the continuation period of Revenue Canada's duty deferral program for goods exported to Mexico or the U.S., NAFTA presents only minor changes to this

program. These changes affect procedures which persons need to follow when claiming duty deferral.

NAFTA requires new documentation from claimants under the duty deferral program. It is important, however, to remember that claimants must still follow these procedures:

- they must apply for duty deferral on Form K90 before they import the goods or materials that they later export; and
- they must include proposals for audit and control systems they will use to monitor goods imported under this program, and the agreement for sale and exportation of the processed goods or a pattern of past sales and exportations of those goods, with the application.

As well as satisfying the procedures listed above, participants under the duty deferral program must satisfy the following procedures introduced under NAFTA:

- They must present proof of the amount of duties they paid to import into the other NAFTA country. They must supply the proof no later than 60 days after the export date. If they do not present this proof, the participants have to repay the relief. If we receive the proof after the 60-day period is over, the participants can then submit a claim to obtain the relief for which entitlement exists.
- The participants are responsible for providing detailed export reports and for categorizing information into such categories as NAFTA, non-NAFTA, Mexico, or U.S.

5. Full and partial duty deferral

On and after the completion dates of the duty deferral programs (i.e., January 1, 1996, for the U.S., and January 1, 2001, for Mexico), certain goods exported to the U.S. and Mexico under these programs will be affected by a reduction in the relief of duties. However, NAFTA provides an exemption for certain other goods. This means that these goods will receive full duty relief when they are exported to the U.S. or Mexico.

5.1 Full duty deferral

The following exemption applies to those originating goods exported to the U.S. or Mexico on and after the completion dates. Revenue Canada will grant full relief on goods originating in the U.S. or Mexico and exported to the U.S. or Mexico.

5.2 Partial duty deferral

Goods not covered under the exemptions for full relief in 5.1 above will be eligible for partial relief on and after the specified completion dates. Revenue Canada bases the amount of relief that it may grant on either the total amount of duties payable on the material inputs imported into Canada and used in the manufacture of the good, or the total amount of duties payable on the manufactured good when exported to the U.S. or to Mexico, whichever amount is less.

6. Additional information

For more information, see Memorandum D7-3-1, *Inward Processing*.



Sales Invoice Facture de vente		Description of Goods Exported Description des marchandises exportées		Material Matériel	Quantity Quantité	Unit Price Prix unitaire	Rate of Exchange Taux de change	Value for Duty Valeur imposable	Rate of Duty Taux des droits	Customs Duties Droits de douane	Customs Office and Accounting Document No. Droits de douane numéro du document comptable	Date of Duty Payment Date du paiement des droits	Tax (incl. GST) (la TPS comprise)	Departmental Use Only À l'usage du Ministère
Number Numéro	Date													
														1
														2
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TOTALS TOTALS														

Je _____
of _____
de _____

acting for _____
agissant pour _____

hereby declare that to the best of my knowledge and belief this claim is true, correct, complete and substantiated by claimant's records
déclare par les présentes qu'au meilleur de ma connaissance cette demande est vraie, correcte, complète et justifiée par les dossiers du demandeur.

Date _____ Signature _____

Record of Payment - Inscription du paiement

AREA BELOW FOR DEPARTMENTAL USE ONLY - LA SECTION CI-DESSOUS EST À L'USAGE DU MINISTÈRE SEULEMENT

Official Coding Code officiel	Payment Paiement	Adjustment to Payment Rajustement au paiement
Customs Duties Droits de douane		
Federal Sales Tax Taxes fédérales sur les ventes	9019	
Import Excise Tax Taxes d'accise à l'importation	9179	
Other Duties Autres droits	9409	
GST TPS		
Sub-total Sous-total		
Interest Intérêts		
TOTAL		

Chapter 9: Temporary Admission

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Chapter 9: Temporary Admission

The *Customs Tariff* imposes customs duties on most goods when they are imported into Canada. In some cases, however, goods enter Canada on a temporary basis only. Under NAFTA, if Revenue Canada can classify goods under specific headings or subheadings of the harmonized system, the Department will give full relief from the payment of customs duties.

This chapter explains the specific classes of goods that can be imported on a temporary basis from Mexico or the United States free of customs duties.

The chapter is divided into four sections:

- Section A: Professional equipment, press equipment, sound or television equipment, cinematographic equipment, and goods for sports purposes
- Section B: Display or demonstration goods
- Section C: Commercial samples
- Section D: Advertising films

Section A: Professional equipment, press equipment, sound or television equipment, cinematographic equipment, and goods for sports purposes

1. Introduction

For details on the legislative provisions, see Schedule I of the *Customs Tariff*, and the *NAFTA Temporary Admission of Goods Regulations*.

2. Purpose

This section outlines the conditions and requirements under which specified goods classified under the following tariff item numbers can be imported temporarily into Canada from Mexico or the U.S.:

Tariff item number	Description
9823.10.00	Professional equipment necessary for carrying out the business activity, trade, or profession of a business person who qualifies for temporary entry, under Chapter 16 of NAFTA
9823.20.00	Equipment for the press
9823.30.00	Equipment for sound or television broadcasting
9823.40.00	Cinematographic equipment
9823.50.00	Goods for sport purposes

3. Persons affected

Only nationals or residents of Mexico or the U.S. who are seeking temporary entry for themselves can seek temporary admission of the specified goods into Canada under the eligible tariff item numbers.

4. Conditions of application

4.1 Qualifying goods

These conditions apply to goods classified under the following tariff item numbers:

- 9823.10.00;
- 9823.20.00;
- 9823.30.00;
- 9823.40.00; and
- 9823.50.00.

The goods can be classified under these tariff item numbers **regardless of their origin** (as defined in Chapter 1) and regardless of whether like, directly competitive, or substitutable goods are available in Canada. However, they must be **imported** into Canada from Mexico or the U.S.

Goods covered in this section apply to both casual and commercial goods (see the glossary).

Professional equipment includes goods essential and directly related to the activity of a business person for that person's sole use in conducting such activity. It does not include any goods intended for personal use.

Goods for sports purposes are sports equipment directly related to and for the sole use of the person or persons engaged in sports contests, demonstrations, or training in Canada.

4.2 Requirements

To qualify for the duty-free treatment under the eligible tariff items, importers must:

- use the goods themselves, or must supervise their use, in the exercise of their business activity, trade, or profession;
- not sell or lease the goods while in Canada;
- ensure that a bond accompanies the goods, if it applies (see paragraphs 5.2, "Security deposit for casual goods," and 6.2, "Security deposit for commercial goods");
- be able to identify the goods when they export them;
- export the goods from Canada or destroy them within the **12-month period** after the import date; and
- import a reasonable quantity of the goods for their intended use.

5. Casual goods - documentation requirements

5.1 Importing casual goods

Importers can apply to import casual goods under an eligible tariff item at the customs office when and where they import the goods. They should document all casual goods on Form E29B, or on an A.T.A. Carnet (see the glossary for details on the A.T.A. Carnet).

Importers must advise Revenue Canada where the goods are destined, how they will use them, and how long they will remain in Canada. They also must provide a detailed list of the goods they are importing, along with their value for duty. Importers can use a commercial invoice, current price list, bill of sale, or other similar document to establish their value for duty.

5.2 Security deposit for casual goods

The Department does not need any security when the casual goods originate in a NAFTA country (as defined in Chapter 1: Certification). Importers using an A.T.A. Carnet will not need to provide additional security.

When importers do not include an A.T.A. Carnet with their non-originating casual goods, Revenue Canada may need security in an amount not more than the duties that would be payable if the importer had not imported the goods temporarily. The security must be in Canadian funds and may be in the form of cash, a certified cheque or traveller's cheque made payable to the Regional Collector, or a bond acceptable to Revenue Canada.

5.3 Exporting casual goods

When exporting the goods, along with the *Temporary Admission Permit* (Form E29B), or the A.T.A. Carnet, the importer must present the goods to Revenue Canada for examination and certification of exportation.

6. Commercial goods - documentation requirements

6.1 Importing commercial goods

Importers can request advance authorization to import commercial goods under an eligible tariff item by applying to a regional remissions officer located in the region where the goods will be imported. Revenue Canada can also grant authorization when the goods are actually imported.

If a security deposit is required, importers must document the commercial goods on Form E29B, *Temporary Admission Permit*.

If no security deposit is required, the importers should account for the commercial goods on Form B3, *Canada Customs Coding Form*, or on an A.T.A. Carnet (see the glossary for details on the A.T.A. Carnet).

Importers must ensure that accounting document packages contain the reason for temporary importation, the destination of the goods, and the period of time during which the goods need to be in Canada.

The temporary importation of the goods will be made easier if Form B3 provides a complete description of the goods, along with their value for duty.

6.2 Security deposit for commercial goods

No security deposit is required for:

- commercial goods accompanied by a valid A.T.A. Carnet; or
- commercial goods that originate in a NAFTA country and that are accompanied by a completed *Certificate of Origin* (see Chapter 1: Certification).

If the goods do not meet any of the above criteria, the importers have to document them on Form E29B, and must pay a security deposit in an amount equal to the duties that would otherwise be payable on entry or final importation of those goods.

The security deposit must be in Canadian funds and may be in the form of cash, a certified cheque or traveller's cheque made payable to the Regional Collector, or a bond acceptable to Revenue Canada.

6.3 Exporting commercial goods

For commercial goods documented on an A.T.A. Carnet, importers must present the goods and the A.T.A. Carnet to Revenue Canada to be examined and certified as having been exported.

For commercial goods importers account for on a Form E29B, *Temporary Admission Permit*, (i.e., goods that do not originate in a NAFTA country, where NAFTA origin cannot be proven, and that are not documented on an A.T.A. Carnet), importers must present the goods, along with the copies of Form E29B to Revenue Canada to be examined and certified as having been exported

For commercial goods importers account for on a Form B3 (i.e., goods that originate in a NAFTA country, or where NAFTA origin can be proven, and that are not documented on an A.T.A. Carnet), the importer must forward proof of export to the regional remissions officer located in the region where the goods will be temporary imported. Proof of export must be in the form of:

- an accounting document issued in a NAFTA country on the importation of the goods into that country;
- a transportation company document regarding the exportation of the goods from Canada;
- other evidence satisfactory to Revenue Canada showing that the goods had been exported from Canada; or
- a copy of Form E15, *Identification of Goods Exported or Destroyed*, proving that the goods were exported.

7. Keeping the specified goods in Canada

7.1 Extending the temporary importation period

When keeping the goods in Canada is reasonably related to the purpose of their temporary admission, and when the importer applies, Revenue Canada will grant an extension of the temporary admission period for a maximum of 12 months at a time. The importer must submit an application to extend the period before that period expires, and can do so by contacting the nearest Revenue Canada office.

7.2 Goods remaining in Canada

If the goods are to remain in Canada, importers must present a properly completed accounting document for full duties, with the required supporting documentation, to the nearest Revenue Canada office. Importers must ensure the accounting document is accompanied by the importer copy and the importer receipt copy of Form E29B when it applies.

Importers can account for goods when they pay the customs duties and applicable taxes that apply to the full value of the goods when the goods were temporarily imported into Canada.

When the goods were destroyed while in Canada, Revenue Canada will ask that an officer, police officer, or fire marshal certify their destruction on Form E15, *Certificate of Destruction/Exportation*.

8. Additional information

For more information, see the following publications:

- Memorandum D8-1-14, *Professional Equipment, Press Equipment, Sound or Television Equipment, Cinematographic Equipment, and Goods for Sports Purposes Imported Temporarily from a NAFTA Country*
- Memorandum D8-1-4, *Temporary Admission Permit Form E29B*
- Memorandum D2-1-1, *Temporary Importation of Baggage and Conveyances by Non-Residents*
- Memorandum D8-1-7, *Use of A.T.A. Carnets for the Temporary Admission of Goods*

Section B: Display or demonstration goods

1. Introduction

For details on the legislative provisions, see tariff item number 9823.60.00 in Schedule I of the *Customs Tariff*, and the *NAFTA Temporary Admission of Display or Demonstration Goods Regulations*.

2. Purpose

This section outlines the conditions and requirements under which goods intended for display or demonstration and classified under tariff item number 9823.60.00 may be imported temporarily into Canada from Mexico or the United States.

3. Persons affected

Only nationals or residents of Mexico or the U.S. can seek temporary admission of goods intended for display or demonstration in Canada.

4. Conditions of application

4.1 Qualifying goods

These conditions apply to goods classified under tariff item number 9823.60.00. The goods can be classified under this tariff item number **regardless of their origin** (as defined in Chapter 1) and regardless of whether like, directly competitive, or substitutable goods are available in Canada. Therefore, a *Certificate of Origin* is not required in this instance. However, the goods must be imported into Canada from Mexico or the U.S.

Goods intended for display or demonstration include:

- products which are on display and demonstration; and
- products that form part of the display and demonstration, such as stands, tables, backdrops, decorations, display booths, tents, and other housings or coverings when they are part of an entire display and demonstration.

4.2 Requirements

To qualify for the duty-free treatment, importers must:

- use the goods themselves, or supervise their use, in the exercise of their business activity, trade, or profession;
- not sell or lease the goods while they are in Canada;

- ensure the goods are accompanied by a bond if it applies (see details below);
- be able to identify the goods when they export them;
- export the goods from Canada or destroy them within the **12-month period** after the import date; and
- import a reasonable quantity of the goods for their intended use.

5. Documentation requirements

5.1 When importing

Before undertaking any procedure, the importer should contact the organizer of the convention or exhibition in Canada who might have appointed an authorized agent to deal with Revenue Canada on importing display goods. The authorized agent may sometimes provide a security deposit for goods to be exhibited or displayed. In many cities across Canada, Revenue Canada establishes temporary offices at the convention and exhibition sites to make moving the display and demonstration goods easier.

Importers must document display and demonstration goods on Form E29B, *Temporary Admission Permit*, unless the importer or the owner has in his or her possession a valid A.T.A. Carnet (see the glossary for details on the A.T.A. Carnet). In addition, when the goods will be displayed or demonstrated at more than one site in Canada, the importer must include a detailed itinerary with Form E29B.

When the goods are brought into Canada using a non-bonded carrier, there are two ways to complete the necessary customs documents:

- importers can complete them at the border point of importation into Canada; or
- importers can complete them at an inland customs office, if they obtain a one-trip authorization to transport the goods into Canada.

5.2 Security deposit

No security deposit is required for:

- goods accompanied by a valid A.T.A. Carnet;
- goods that originate in a NAFTA country (as defined in Chapter 1: Certification); or
- goods intended for display or demonstration at a convention or exhibition held by any level of government, Canadian or otherwise.

For goods that do not meet any of these criteria, importers must post a security deposit in an amount equal to the duties that would otherwise be payable on entry or final importation of those goods. Importers or organizers who would like to know the rates of customs duties and taxes that would apply can send information describing their event to the regional Revenue Canada office nearest the exhibition site at least eight weeks before the goods will be imported.

The security deposit must be in Canadian funds in the form of cash, a certified cheque or traveller's cheque made payable to the Regional Collector, or a bond acceptable by Revenue Canada (see the glossary).

5.3 When exporting

At the time of exportation, the importers must present the goods along with copies of Form E29B, *Temporary Admission Permit*, or the A.T.A. Carnet, to Revenue Canada for examination and certification of exportation. If a bonded carrier will export the goods, the paperwork can be done at the closest inland customs office. If the goods are not being exported by a bonded carrier, the goods must be presented along with the relevant documentation at the customs office located at the point of exit.

If Revenue Canada determines that this procedure was impossible or impracticable, the Department may accept the following documents as proof of exportation:

- a consumption accounting document or landing certificate fully completed and certified by a customs officer of the country to which the goods have been exported;
- a U.S. *Certificate of Disposition of Imported Merchandise* (D.F. 3227) fully completed and certified by a U.S. customs officer; or
- any other document acceptable to Revenue Canada that proves that the goods were exported.

Once the goods have been exported from Canada and all formalities have been completed, Revenue Canada will cancel the bond or send a cheque to the importer for the amount of the security deposit.

6. Extending the temporary admission period

When the temporary admission period for the goods is not sufficient, the importer or the organizer of a convention or exhibition can apply for an extension. Revenue Canada will consider an extension of the admission period of a maximum of 12 months. The importer or organizer must submit the application for an extension of a period before that period expires, and can do so by contacting the nearest Revenue Canada office.

7. Goods remaining in Canada

If the goods are to remain in Canada, the importer must present a properly completed accounting document for full applicable duties, as well as the required supporting documentation, at the nearest Revenue Canada office. The importer copy and the importer receipt copy of Form E29B, *Temporary Admission Permit*, must accompany the accounting document. The *Certificate of Origin* may be required as part of the accounting document package.

Importers can account for goods when they pay the customs duties and applicable taxes imposed on the full value of the goods when the goods were temporarily imported into Canada.

When the goods were destroyed while in Canada, Revenue Canada will ask that a departmental officer, police officer, or fire marshal certify their destruction.

8. Additional information

8.1 Specific industrial sectors

Please note that certain clothing and textile products imported into Canada are subject to import permit control. Importers should contact the Department of Foreign Affairs.

Importers should contact Agriculture and Agri-food Canada before they import certain plants, animals, and products.

8.2 Reference

For more information, see Memorandum D8-1-15, *Display or Demonstration Goods Imported Temporarily from a NAFTA Country*.

8.3 Goods and services tax (GST)

Revenue Canada considers those goods classified under tariff item number 9823.60.00 as non-taxable under the GST. A security deposit may be required.

Section C: Commercial samples

1. Introduction

For details on the legislative provisions, see tariff item number 9823.70.00 in Schedule I of the *Customs Tariff*, and the *NAFTA Commercial Samples and Advertising Films Regulations*.

2. Purpose

This section outlines the conditions and requirements under which commercial samples classified under tariff item number 9823.70.00 may be imported temporarily into Canada from Mexico or the United States.

3. Persons affected

3.1 Importers into Canada who are non-residents of Canada

Any non-resident importer can seek temporary admission of commercial samples into Canada.

3.2 Importers into Canada who are residents of Canada

To be entitled to seek temporary admission of commercial samples, importers who are residents of Canada must:

- be employees or agents of a supplier from Mexico or the U.S.;
- act on behalf of the supplier; and
- negotiate sales contracts only in the name of the foreign supplier.

When they are residents of Canada, importers may have to produce evidence that:

- they are bona fide agents of the Mexican or U.S. supplier;
- they are acting on behalf of the supplier; and
- they will negotiate subsequent sales contracts only in the name of the supplier.

Canadian residents who are employees or **agents of Canadian subsidiaries** of Mexican or U.S. firms, or who are **agents of Canadian distributors** of Mexican or U.S. goods, are **not** employees or bona fide agents of Mexican or U.S. suppliers. Therefore, these importers are not entitled to temporarily import commercial samples under tariff item number 9823.70.00.

4. Conditions of application

4.1 Qualifying goods

These conditions apply to goods classified under tariff item number 9823.70.00. The goods can be classified under this tariff item number **regardless of their origin** (as defined in Chapter 1: Certification) and regardless of whether like, directly competitive, or substitutable goods are available in Canada. However, they must be **imported** into Canada from Mexico or the U.S.

4.2 Requirements

To qualify for the duty-free treatment, importers must:

- import the goods solely to solicit orders for goods or services provided from a country other than Canada;
- use the goods exclusively for exhibition or demonstration, and not sell or lease them while in Canada (importers or persons under the importers' personal supervision are the only persons allowed to exhibit or demonstrate the commercial samples in Canada);
- be able to identify the goods when they export them;
- export the goods from Canada within the 12-month period after the import date; and import a reasonable quantity of the goods for their intended use (the importation is usually restricted to one sample of each kind or quality).

5. Documentation requirements

5.1 When importing

Although no security deposit is required, importers must document and control the commercial samples they temporarily import from a NAFTA country on Form E29B, *Temporary Admission Permit*, or on an A.T.A. Carnet (see the glossary).

Moreover, when the commercial samples are worth more than CAN\$1,000, importers must:

- when the commercial samples are released, provide an officer with a list of the dates and the places in Canada where they will exhibit or demonstrate the samples; and
- keep and make available any records of the commercial samples while they remain in Canada.

5.2 When exporting

At the time of exportation, importers must present the goods along with copies of Form E29B, *Temporary Admission Permit*, or the A.T.A. Carnet to Revenue Canada for examination and certification of exportation.

If Revenue Canada determines that this procedure was impossible or impracticable, the Department may accept the following documents as proof of exportation:

- a consumption entry or landing certificate completed and certified by a Mexican or U.S. customs officer;
- a U.S. *Certificate of Disposition of Imported Merchandise* (D.F. 3227) completed and certified by a U.S. customs officer; or
- any other document acceptable to Revenue Canada that proves that the goods were exported.

6. Extending the temporary importation period

When the temporary admission period for the goods is not sufficient, the importers or the organizers of conventions or exhibitions can apply for an extension. Revenue Canada will consider extension of the admission period for a maximum of 12 months. Importers must submit the application before that period expires. Contact the nearest Revenue Canada customs office for details.

7. Goods remaining in Canada

If the goods are to remain in Canada, importers must present a properly completed accounting document for full applicable duties, with the required supporting documentation, at the nearest Revenue Canada office, along with the importer copy and the importer receipt copy of Form E29B, *Temporary Admission Permit*. Importers can account for the goods when they pay the customs duties and applicable taxes imposed on the goods' full value when they were imported temporarily into Canada.

8. Additional information

8.1 Reference

For more information, see Memorandum D8-1-13, *Commercial Samples Imported Temporarily from a NAFTA Country*.

8.2 Goods and services tax (GST)

Revenue Canada considers those goods classified under tariff item number 9823.70.00 as non-taxable with regard to the GST. A security deposit for GST on non-originating goods may be required. In this case, a *Certificate of Origin* may also be required.

Section D: Advertising films

1. Introduction

For details on the legislative provisions, see Schedule I of the *Customs Tariff*, and the *NAFTA Commercial Samples and Advertising Films Tariff Items 9823.70.00 and 9823.80.00 Regulations*.

2. Purpose

This section outlines the conditions and requirements under which advertising films classified under tariff item number 9823.80.00 can be imported temporarily into Canada from Mexico or the United States.

3. Persons affected

3.1 Importers into Canada who are non-residents of Canada

Any non-resident importer can seek temporary admission of advertising films into Canada.

3.2 Importers into Canada who are residents of Canada

To be entitled to seek temporary admission of advertising films, importers who are residents of Canada must:

- be employees or agents of a supplier from Mexico or the U.S.;
- act on behalf of the supplier; and
- negotiate sales contracts in the name of the supplier.

When they are residents of Canada, importers will have to produce evidence that:

- they are bona fide agents of the Mexican or U.S. supplier;
- they are acting on behalf of the supplier; and
- they will negotiate subsequent sales contracts only in the name of the supplier.

Canadian residents who are employees or **agents of Canadian subsidiaries** of Mexican or U.S. firms, or who are **agents of Canadian distributors** of Mexican or U.S. goods, are not employees or bona fide agents of Mexican or U.S. suppliers. Therefore, these importers are not entitled to temporarily import advertising films under tariff item number 9823.80.00.

4. Conditions of application

4.1 Tariff classification

These procedures apply to goods classified under tariff item number 9823.80.00. The advertising films can be classified under this tariff item number regardless of their origin (as defined in Chapter 1: Certification). However, they must be **imported** into Canada from a NAFTA country.

4.2 Requirements

To qualify for the duty-free treatment, importers must:

- use the goods exclusively for exhibition or demonstration, and not sell or lease them while in Canada;
- be able to identify the goods when they export them;
- export the goods from Canada within the 12-month period after the import date; and
- import a reasonable quantity of the goods for their intended use (the importation is restricted to one copy of each film).

4.3 Qualifying goods

Advertising films are recorded visual media with or without sound tracks that:

- consist of images showing the nature or operation of goods or services that a person established or resident in the U.S. or Mexico offers for sale or lease;
- are suitable for exhibition to prospective customers but not for broadcast to the general public; and
- are imported in packets that each contain no more than one copy of each film and do not form part of a larger consignment.

5. Documentation requirements

5.1 When importing

Although no security of customs duties is required, importers of advertising films imported temporarily from a NAFTA country must document and control them on Form E29B, *Temporary Admission Permit*.

Moreover, if the advertising films are worth more than CAN\$1,000, the importer must:

- provide an officer at the time the advertising films are released with a list of the dates and the places in Canada where they will be exhibited or demonstrated; and
- keep and make available records of the advertising films while they remain in Canada.

5.2 When exporting

At the time of exportation, importers must present the films along with copies of Form E29B, *Temporary Admission Permit*, to Revenue Canada for examination and certification of exportation.

If Revenue Canada determines that this procedure was impossible or impracticable, the Department may accept the following documents as proof of exportation:

- a customs document presented in a NAFTA country showing the importation into that country of the goods, such as a consumption entry, landing certificate, or a certificate of disposition;
- a transportation company document, such as a bill of lading, that details the exportation of the goods; or
- any other documentation that establishes that the specific goods have been exported.

6. Keeping the advertising films in Canada

6.1 Extending the temporary importation period

When retaining the advertising films in Canada is reasonably related to the purpose of their temporary admission, and when importers apply for an extension, Revenue Canada will grant an extension of the temporary admission period for a maximum of 12 months at a time. Importers must submit the application before that period expires. Contact the nearest Revenue Canada office for details.

6.2 Goods remaining in Canada

If the goods are to remain in Canada, importers must present a properly completed accounting document for full duties with the required supporting documentation, at the nearest Revenue Canada office, along with the importer copy and the importer receipt copy of Form E29B, *Temporary Admission Permit*.

Importers can account for goods when they pay the customs duties and applicable taxes imposed on the goods' full value when they were temporarily imported into Canada.

7. Additional information

7.1 Reference

For more information, see the following publications:

- Memorandum D8-1-16, *Advertising Films Imported Temporarily from a NAFTA Country*
- Memorandum D8-1-4, *Temporary Admission Permit Form E29B*

7.2 Goods and services tax (GST)

Revenue Canada considers those goods classified under tariff item number 9823.80.00 as non-taxable with regard to the GST. A security deposit for GST on non-originating goods is required.



Revenue Canada
Customs, Excise and Taxation

Revenu Canada
Accise, Douanes et Impôt

CERTIFICATE OF DESTRUCTION / EXPORTATION
CERTIFICAT DE DESTRUCTION / EXPORTATION

1. Applicant's Name and Address / Nom et adresse du requérant		THIS DOCUMENT AND THE GOODS DESCRIBED HEREIN MUST BE PRESENTED TO CANADA CUSTOMS FOR EXAMINATION AND CERTIFICATION PRIOR TO DESTRUCTION / EXPORTATION. FAILURE TO DO THIS WILL RENDER THIS DOCUMENT INVALID. See D20-1-4 for completion instructions. CE DOCUMENT ET LES MARCHANDISES DÉSIGNÉES CI-DESSOUS DOIVENT ÊTRE PRÉSENTÉES À DOUANES CANADA POUR FIN D'EXAMEN ET CERTIFICATION AVANT LA DESTRUCTION / EXPORTATION. EN DÉFAUT DE QUOI, CE DOCUMENT SERA		2. Page of Pages	
4. The goods described herein are being destroyed <input type="checkbox"/> détuées or exported <input type="checkbox"/> exportées <input type="checkbox"/> as defective or inferior à raison de défectuosité ou de qualité inférieure <input type="checkbox"/> after being imported on a 1/60 basis après avoir été importées sur une base de 1/60 <input type="checkbox"/> as surplus or obsolete étant surannées ou excédentaires <input type="checkbox"/> under the Inward Processing Program après avoir été importées en franchise en vertu du programme pour le traitement inter.		5. Weight / Poids <input type="checkbox"/> Net <input type="checkbox"/> Gross Brut			
6. If goods were previously accounted for at Customs, state accounting date, Customs office and accounting document no. Si les marchandises ont été déclarées aux douanes antérieurement, veuillez indiquer la date de déclaration, le bureau de douanes et le n° de transaction.	7. Marks and Numbers Marques et Numéros	8. Number and type of packages, complete description of goods (State serial, model and part numbers or other identifying marks.) Nombre et genre de colis, désignation complète des marchandises (Indiquez le numéro de série, le modèle ou le numéro des pièces ou autres marques d'identification.)	9. Quantity and Unit of Measure Quantité et unité de mesure	10. Unit Price Prix d'unité	11. Amount Montant
Customs Use Only / À l'usage des douanes seulement					
12. Inspection Comments / Commentaires sur l'inspection				13. Point of Destruction / Exportation Point de destruction / Exportation	
14. Scrap derived from the destruction of the goods described herein was: Les rebuts provenant de la destruction des marchandises désignées ci-dessus ont été: <input type="checkbox"/> exported exportées <input type="checkbox"/> destroyed détuées <input type="checkbox"/> no scrap pas de rebut <input type="checkbox"/> sold vendus <input type="checkbox"/> not disposed of at time of destruction non écoulées au moment de la destruction					
15. The goods described herein appear to be: / Les marchandises désignées ci-dessus sont: <input type="checkbox"/> used usagées <input type="checkbox"/> unused non usagées <input type="checkbox"/> damaged endommagées			16. Customs Officer / Agent des douanes		17. Badge No. / N° de matricule
18. Return Certified Copies to: Retourner les copies certifiées à:			19. Customs Date Stamp / Timbre dateur des douanes		

E 15 (93/07)



Revenue Canada
Customs, Excise and Taxation

TEMPORARY ADMISSION PERMIT
PERMIS D'ADMISSION TEMPORAIRE

1 Importer - Name, Address and Telephone No. Importeur - Nom, adresse et n° de téléphone		2 Agent - Name, Address and Telephone No. Mandataire - Nom, adresse et n° de téléphone		3 Destination in Canada / Destination au Canada		4 Broker's Ref. / Ref. du courtier											
5 Description of Goods / Description des marchandises		6 Classification No. / N° de classement		7 Value for Duty / Valeur en douane		8 Treatment / Traitements		9 Rate of Duty / Taux de droit		10 Customs Duties / Droits de douane		11 Enbridge Tax / Taxe d'enlèvement		12 Value for Tax / Valeur pour taxe		13 GST / TPS	
18 declare the information contained to be true and complete Déclarer que les renseignements fournis sont vrais et complets		19 Signature		20 Signature		21 Signature		22 Signature		23 Signature		24 Signature		25 Signature		26 Signature	

The goods described herein are subject to Customs control while in Canada and must be re-exported under Canada Customs supervision on or before the expiry date of the permit. On re-exportation both goods and permit must be presented for identification and completion. Tant qu'ils sont au Canada, les marchandises décrites au formulaire sont assujetties au contrôle des Douanes et doivent être réexportées sous la surveillance de Douanes Canada le ou avant la date d'expiration du permis. Lors de la réexportation, les marchandises et le permis doivent être présentés aux fins d'identification et de complémentation.

FAILURE TO SURRENDER THIS TEMPORARY PERMIT ON LEAVING CANADA WILL FORFEIT THE DEPOSIT. FOR ADDITIONAL INFORMATION, SEE REVERSE SIDE.
LE DÉPÔT SERA CONFISQUÉ SI CE PERMIS TEMPORAIRE N'EST PAS PRÉSENTÉ EN QUITTANT LE CANADA. POUR PLUS DE RENSEIGNEMENTS, VOIR AU VERSO.

THIS PORTION TO BE COMPLETED BY CANADA CUSTOMS FOR ACQUITTAL PURPOSES / CETTE PARTIE DOIT ÊTRE REMPLIE PAR DOUANES CANADA AUX FINS D'ACQUITTEMENT	
19 Goods described herein were Les marchandises décrites au formulaire ont été	
20 Examined by me and re-exported from Canada Vérifiées par moi et réexportées du Canada	
21 Deposited under supervision Déposées sous surveillance	
22 Examined by me and shipped in bond to Vérifiées par moi et expédiées en douane à	
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DEPARTMENT OF NATIONAL REVENUE
MINISTÈRE DU REVENUE NATIONAL

19 Permit No. / N° du permis		20 Entry Date / Date d'entrée		21 Entry No. / N° d'entrée	
22 Cargo Control No. / N° de contrôle de la cargaison		23 GST / TPS		24 Refund / Remboursement	
25 Value / Valeur		26 Currency / Monnaie		27 Name and Address / Nom et adresse	
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ISSUING OFFICE / BUREAU D'ÉMISSION

Chapter 10: Repairs and Alterations

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Chapter 10: Repairs and Alterations

This chapter is divided into three sections:

- Section A: Importation of goods repaired free under warranty in a NAFTA country
- Section B: Canadian vessels repaired or altered in the United States or Mexico
- Section C: Goods re-entered after repair or alteration in a NAFTA country

Section A: Importation of goods repaired free under warranty in a NAFTA country

1. Introduction

For details on the legislative provisions, see tariff item number 9820.00.00 in Schedule I of the *Customs Tariff*, and the *NAFTA Importation of Goods Exported for Repair under Warranty Regulations*.

2. Purpose

This section outlines the conditions and requirements under which goods can be imported duty-free into Canada from Mexico or the U.S. after having been repaired free under warranty. These goods are classified under tariff item number 9820.00.00.

3. Persons affected

Importers, owners, or other persons authorized by the importer to account for goods (e.g., brokers, freight forwarders) can seek to import goods repaired free under warranty in a NAFTA country.

4. Conditions of application

These procedures and conditions apply to goods classified under tariff item number 9820.00.00 that have been exported to the U.S. or Mexico for repair under warranty. The goods can be classified under this tariff item number **regardless of their origin** (as defined in Chapter 1: Certification). Therefore, a *Certificate of Origin* is not required in this instance.

Goods can be imported under tariff item number 9820.00.00 as long as the **full** cost of repair (labour and parts) under warranty to the goods is borne by the supplier of the goods. Shipping charges, communications expenses, and other expenses not related to the repair are not taken into account.

5. Documentation requirements

5.1 When exporting from Canada

When exporting the goods, the importer, owner, or other authorized person must document the goods on Form E15, *Certificate of Destruction/Exportation*. After Form E15 is validated at the point of exit, Revenue Canada will forward the original and duplicate copies to the exporter or the exporter's agent.

Revenue Canada should examine and identify the articles before they are packed and crated.

5.2 When importing into Canada

When importing the goods, the relevant accounting document must accompany the goods. A statement of the value of the repair must appear in the body of the invoice, even though the repair was performed free under warranty.

Moreover, when accounting for the goods, the importer, owner, or other authorized person must submit:

- a copy of the certified Form E15 as proof of exportation (if not available, see paragraph 5.3, "Alternate documentation");
- an invoice or written statement from the supplier showing that the repair was done free of charge under the terms of a warranty; and
- a statement by the importer (see the following for format).

Statement

I, _____, of _____ (province), Canada, certify that _____ (as described in the attached customs accounting document) are entitled to the benefits of tariff item number 9820.00.00 in Schedule I of the *Customs Tariff*, and that the goods were exported in the month(s) of _____ 19___. I also certify that Revenue Canada has not granted any exemption from, or refund or drawback of, customs duties and that I have not claimed any exemption, refund, or drawback for the goods as described.

Signature

Date

5.3 Alternate documentation

In cases when a certified Form E15 is unavailable to be presented when the goods are being imported, Revenue Canada will also accept any of the following as proof of exportation:

- a customs document presented to the customs administration of the U.S. or Mexico on importing the goods into the U.S. or Mexico;
- a document of a transportation company on exporting the goods from Canada;
- a written statement made by the exporter in the U.S. or Mexico stating that the goods being exported to Canada are the same goods that were imported to the U.S. or Mexico for repair under warranty; or
- other documentation that Revenue Canada accepts to establish that the goods were exported to the U.S. or to Mexico.

6. Additional information

6.1 Reference

For more information, see Memorandum D8-2-22, *Importation of Goods Repaired Free under Warranty in a NAFTA Country*.

6.2. Goods and services tax (GST)

Revenue Canada considers those goods classified under tariff item number 9820.00.00 non-taxable with regard to the GST.

Section B: Canadian vessels repaired or altered in the United States or Mexico

1. Introduction

For details on the legislative provisions, see Schedule I of the *Customs Tariff*, and the *NAFTA Tariff Item Numbers 9821.00.00 and 9822.00.00 Accounting Regulations*.

2. Purpose

This section outlines the conditions under which certain Canadian vessels can be imported into Canada after having been exported to the U.S. or Mexico for repair or alteration.

Section C of this chapter covers re-entry into Canada of other goods repaired or altered in the U.S. or Mexico.

3. Persons affected

The importer of the vessel can be the owner of the vessel or any other person (e.g., broker) who is authorized to account for a vessel classified under tariff item number 9821.00.00.

4. Conditions of application

4.1 Qualifying goods

These conditions and requirements apply to Canadian vessels classified under tariff item number 9821.00.00. The goods can be classified under this tariff item number regardless of their country of origin (as defined in Chapter 1: Certification), and regardless of whether the repair or alteration could have been performed in Canada.

Tariff item number 9821.00.00 relates only to Canadian vessels exported from Canada for the purpose of being repaired or altered in the U.S. or Mexico. Canadian vessels which undergo emergency repairs or which are repaired or altered during the course of the vessel's operations abroad, may be eligible for full relief (see Memorandum D8-2-1, *Canadian Goods Abroad*) or the reduction or removal of duties (see the *Vessel Duties Reduction or Removal Regulations*, Order-in-Council P.C. 1990-939).

4.2 Authorized operations

For the purpose of tariff item number 9821.00.00, **repair** is restoring a vessel or its components to good operating condition. An **alteration** is any operation that alters the vessel but does not include an operation which changes the essential characteristic of the vessel.

5. Documentation requirements

5.1 When exporting

When exporting the vessel from Canada, the importer should usually complete Form A6, *Outward Report*, to use as proof of exportation.

5.2 When importing

When importing the vessel back into Canada, the importer presents Form B3, *Canada Customs Coding Form*, to Revenue Canada. So that the rate of customs duty can be levied only on the value of the repair or alteration, the importer should base the value for duty shown on the accounting document on the price paid or payable for the repair or alteration.

In addition, when accounting for the vessel, the importer must submit:

- an invoice or written statement from the person who performed the repair or alteration, setting out a detailed description of and the value of the repair or alteration; and
- a copy of the certified Form A6, *Outward Report*, as proof of exportation (if not available, see paragraph 5.3 below).

5.3 Alternate documentation

In cases when the importer does not have a certified Form A6 to present when the goods are being imported, Revenue Canada will accept any of the following as proof of exportation:

- a customs document presented to the customs administration of the U.S. or Mexico on the arrival of the vessel from Canada;
- a report made to an appropriate portion of the government of the U.S. or Mexico that indicates the vessel had arrived from Canada;
- a customs document presented to the customs administration of the U.S. or Mexico on the departure of the vessel from the U.S. or Mexico that establishes the vessel had arrived in the U.S. or Mexico from Canada;

- a report made to an appropriate portion of the government of the U.S. or Mexico that indicates the vessel had departed from the U.S. or Mexico, and that establishes the vessel had arrived in the U.S. or Mexico from Canada; or
- any other documentation that the importer can present to the customs administration of the U.S. or Mexico to establish that the vessel was exported to the U.S. or Mexico.

6. Additional information

6.1 Reference

For more information, see the following publications:

- Memorandum D8-2-25, *Canadian Vessels Repaired or Altered in the United States or in Mexico*
- Memorandum D8-2-1, *Canadian Goods Abroad*
- Order-in-Council P.C. 1990-939, dated May 24, 1990, *Vessel Duties Reduction or Removal Regulations*

6.2 Goods and services tax (GST)

For goods classified under tariff item number 9821.00.00, the GST is payable only on the value of the work done outside Canada.

Section C: Goods re-entered after repair or alteration in a NAFTA country

1. Introduction

For details on the legislative provisions, see Schedule I of the *Customs Tariff*, and the *NAFTA Tariff Item Numbers 9821.00.00 and 9822.00.00 Accounting Regulations*.

2. Purpose

This section outlines the conditions under which goods can be imported into Canada after having been exported to the United States or Mexico for repair or alteration.

Re-entry into Canada of Canadian vessels repaired or altered in the U.S. or Mexico is covered in section B of this chapter.

3. Persons affected

The importer of the goods may be the owner of the goods or any other person (e.g., broker, freight forwarder) authorized to account for goods classified under tariff item number 9822.00.00.

4. Conditions of application

4.1 Qualifying goods

These conditions and requirements apply to goods classified under tariff item number 9822.00.00. The goods can be classified under this tariff item number regardless of their origin (as defined in Chapter 1: Certification), and regardless of whether the repair or alteration could have been performed in Canada.

4.2 Authorized operations

For the purposes of this provision, **repair** is the adjustment of the good to restore it to its original operating condition, as well as any minor changes necessary to complete such restoration, which can include replacing parts.

An **alteration** is a modification other than a repair. However, repairs or alterations do not include an operation or process that either destroys the essential characteristics of a good, or creates a new or commercially different good.

5. Documentation requirements when importing

When importing the goods into Canada, the importer must ensure that a completed Form B3, *Canada Customs Coding Form*, accompanies the goods.

In addition, when accounting for the goods, the importer must submit:

- an invoice or a written statement from the person who performed the repair or alteration giving a detailed description of and the value of the repair or alteration; and
- proof of exportation of the goods to the U.S. or Mexico in the form of:
 - a customs document presented to the customs administration of the U.S. or Mexico on the arrival of the goods in the U.S. or Mexico;
 - a document from a transportation company on exporting the goods from Canada;
 - a declaration made by the exporter in the U.S. or Mexico stating that the goods that arrive in Canada are the goods that were exported to the U.S. or Mexico for repair or alteration; or
 - other documentation that can be presented to the customs administration of the U.S. or Mexico to establish that the goods were exported to the U.S. or Mexico.

Importers must complete all Revenue Canada invoices that apply. The importer must show a statement of the value of the repair or alteration on the invoice so that the rate of customs duty will only be assessed on the value of the repair or alteration.

6. Additional information

6.1 Reference

For more information, see the following publications:

- Memorandum D8-2-1, *Canadian Goods Abroad*
- Memorandum D8-2-26, *Goods Re-Entered after Repair or Alteration in a NAFTA Country*
- Memorandum D10-14-11, *Canadian Goods and Goods Once Accounted for, Exported and Returned*
- Memorandum D8-3-8, *Repair Abroad of Canadian Civil Aircraft, Canadian Aircraft Engines and Flight Simulators Remission Order*

6.2 Goods and services tax (GST)

For goods imported under the provisions of tariff item number 9822.00.00, the GST is only payable on the value of the work done outside Canada.

6.3 Articles exported for testing

Articles exported for testing only that are not adjusted, altered, or enhanced in value can be imported under the provisions of tariff item numbers 9813.00.00 or 9814.00.00. For details, see Memorandum D10-14-11, *Canadian Goods and Goods Once Accounted for, Exported and Returned*.

6.4 Importing an aircraft exported for repair

See Memorandum D8-3-8, *Repair Abroad of Canadian Civil Aircraft, Canadian Aircraft Engines and Flight Simulators Remission Order*, for details on these importations.

6.5 Aircraft, vehicle, and vessel emergency repairs

According to the provisions outlined in Memorandum D8-2-1, *Canadian Goods Abroad*, tariff treatment for aircraft, vehicle, and vessel emergency repairs is covered in subsection 88(2) of the *Customs Tariff*.

Chapter 11: Miscellaneous

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Chapter 11: Miscellaneous

This chapter is divided into four sections:

- Section A: Entry into Canada of commercial samples of negligible value from a NAFTA country
- Section B: Entry into Canada of printed advertising materials from a NAFTA country
- Section C: Confidentiality
- Section D: Keeping books and records

Section A: Entry into Canada of commercial samples of negligible value from a NAFTA country

1. Introduction

For details on the legislative provisions, see tariff item number 9824.00.00 in Schedule I of the *Customs Tariff*, and the *NAFTA Commercial Samples of Negligible Value Regulations*.

2. Purpose

This section outlines the conditions under which commercial samples of negligible value can be imported duty-free into Canada from a NAFTA country. See Chapter 9, "Temporary Admission" for information on re-entry into Canada of commercial samples of negligible value that were originally exported from Canada. Temporary importation of commercial samples is also covered in Chapter 9.

3. Persons affected

Importers, owners, or other persons authorized to account for goods (e.g., brokers, freight forwarders) can seek duty-free importation of commercial samples of negligible value.

4. Conditions of application

4.1 Tariff classification

These procedures apply to goods that qualify for classification under tariff item number 9824.00.00. The commercial samples of negligible value can be classified under this tariff item number regardless of their origin (as defined in Chapter 1, "Certification"). Therefore, a *Certificate of Origin* is not required in this instance. However, the goods must be imported into Canada from a NAFTA country.

4.2 Value of the goods

To qualify for duty-free importation, the commercial samples of negligible value cannot be worth more than US\$1 (one United States dollar) or the equivalent in Canadian or Mexican currency, individually or in the aggregate as shipped.

When their value is more than US\$1, the commercial samples can still qualify for the duty-free treatment if they are in a form that renders them useless as merchandise by marking, tearing, perforating, or otherwise altering them.

4.3 Restrictions

The commercial samples of negligible value can only be used to solicit orders for goods or services that will be supplied directly from a country other than Canada to Canadian clients or importers.

5. Documentation required when importing the goods

The relevant accounting document must accompany the commercial samples of negligible value. Moreover, the importer, owner, or person authorized to account for the goods also has to submit:

- an invoice, a bill of lading, or a written statement from the foreign supplier of the commercial sample of negligible value that shows its value; and
- any documentation that establishes that the importer of the commercial sample of negligible value represents the foreign supplier or is acting on behalf of such a representative (e.g., a copy of an agreement or contract).

6. Additional information

6.1 References

For more information, see the following publications:

- Memorandum D8-2-7, *Commercial Samples of Negligible Value Imported from a NAFTA Country*
- Memorandum D8-2-8, *Samples of Negligible Value Remission Order*

6.2 Goods and services tax (GST)

To be eligible for a remission of the GST, the importer, owner, or person authorized to account for the goods should quote Order-in-Council Number P.C.1976-2984 in the special authority field of Form B3 in the following format: 76-2984.

Section B: Entry into Canada of printed advertising materials from a NAFTA country

1. Introduction

For details on the legislative provisions, see tariff item number 9825.00.00 in Schedule I of the *Customs Tariff*, and the *NAFTA Importation of Printed Advertising Materials Regulations*.

2. Purpose

This section outlines the conditions under which printed advertising materials can be imported duty-free into Canada from a NAFTA country.

3. Persons affected

Importers, owners, or other persons authorized to account for goods (e.g., brokers, freight forwarders) can seek duty-free importation of printed advertising materials.

4. Conditions of application

4.1 Tariff classification

These procedures apply to goods that qualify for classification under tariff item number 9825.00.00. Printed advertising materials can be classified under this tariff item regardless of their origin (as defined in Chapter 1, "Certification"). Therefore, a *Certificate of Origin* is not required in this instance. However, the goods must be imported into Canada from a NAFTA country.

4.2 Requirements

To qualify for duty-free importation, the importers, owners, or other persons authorized to account for goods must:

- use the goods to promote, publicize, or advertise a good or service;
- intend to use the goods to advertise a good or service;
- supply the goods free of charge;
- import the goods in packets that each contain no more than **one copy** of each such material, and ensure that the material and packets do not form part of a larger consignment.

4.3 Types of qualifying goods

Examples of the types of goods that qualify are brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters.

5. Documentation required when importing the goods

The relevant accounting document must accompany the printed advertising materials. Moreover, the importer, owner, or person authorized to account for the goods has to submit:

- an invoice, a bill of lading, or a written statement from the foreign supplier of the printed advertising materials that shows that the goods are supplied free of charge; and
- documentation that establishes the fact that the printed advertising materials are being supplied in the form and for the purposes or uses specified in 4.2 above (e.g., a letter from the exporter or producer).

6. Additional information

6.1 References

For more information, see Memorandum D8-3-18, *Printed Advertising Materials Imported from a NAFTA Country*.

6.2 Goods and services tax (GST)

To be eligible for a remission of the GST, the importer, owner, or person authorized to account for the goods should quote Order-in-Council Number P.C. 1974-2522 in the special authority field of Form B3 in the following format: 74-2522. See Chapter 4, "Entry for information on special authors."

Section C: Confidentiality

1. Introduction

Revenue Canada treats all information it receives as strictly confidential. It will not disclose information to anyone other than government officials who are responsible for trade administration. For details, see article 507 of NAFTA, and sections 107 and 108 of the *Customs Act*.

2. Purpose

This section describes confidentiality of business information.

3. Persons affected

Exporters, producers, and importers are affected by confidentiality provisions.

4. General

Information that Revenue Canada collects from exporters, importers, or producers is treated as protected by Revenue Canada. The Department will not release any information without the approval of the exporter, importer, or producer.

Any person who requests information about the exporter or producer's file must provide a letter of authorization from the exporter or producer. Even then, Revenue Canada will only give the information the exporter or producer authorizes to that person.

Section D: Keeping books and records

1. Introduction

Article 505 of NAFTA requires producers, exporters, and importers to maintain records. For details on domestic legislation requiring Canadian importers to keep records, see section 40 of the *Customs Act*, and the *Importers' Record Regulations*. For details on domestic legislation requiring Canadian producers and exporters to keep records, see subsection 97.2(1) of the *Customs Act*, and the *Exporters' Record Regulations*.

2. Purpose

This chapter describes record-keeping for NAFTA.

3. Persons affected

Exporters, producers, and importers are affected by these record-keeping provisions.

4. General guidelines

4.1 In Canada

Importers in Canada must keep the *Certificate of Origin* and any other records relating to the goods the certificate covers.

Canadian exporters or producers who complete and sign the *Certificate of Origin* must keep all records that relate to the origin of the goods.

Records must be kept for a minimum of six years after the date on which the certificate was signed.

4.2 In the U.S. and Mexico

Producers and exporters in the U.S. or Mexico who complete the *Certificate Of Origin* for shipments to Canada must keep copies of the certificate and all records they used to determine the origin of the goods the certificate covers. This information must be kept for a minimum of five years after the date on which the certificate was signed.

5. Record-keeping methods

The records must be kept in a way that enables a Revenue Canada officer to perform detailed audits of the records and to obtain or verify the information on which the Department made a determination of the amount of the duties paid or payable.

When Revenue Canada finds that a producer has failed to maintain books and records according to the *Generally Accepted Accounting Principles* (GAAP) that apply in that country, the Department will give the producer the opportunity to record its costs according to GAAP within 60 days of written notification.

6. Denying claims

When a person has not kept records according to legislative requirements, Revenue Canada may deny or withdraw preferential tariff treatment under NAFTA for the commercial goods that are the subject of those records.

In addition, if a person does not allow Revenue Canada access to the records (i.e., when requested during a verification or audit visit)¹, the Department may deny or withdraw preferential tariff treatment under NAFTA.

7. Additional information

For more information, see the following publications:

- Memorandum D1-4-1, *Invoicing Requirements of Canada Customs*
- Memorandum D17-1-0, *Accounting for Imported Goods and Payment of Duties Regulations*
- Memorandum D17-1-13, *Interim Accounting (Provisional Documentation)*
- Memorandum D17-1-21, *Maintenance of Records and Books in Canada by Importers*
- Memorandum D20-1-5, *Maintenance of Records and Books in Canada by Exporters*

1 See Chapter 6, "Origin Determination and Verification," for details.

Glossary

A.T.A. Carnet

See "*Admission Temporaire - Temporary Admission Permit*."

Accounting documents

Accounting documents include Form B3, *Canada Customs Coding Form*, Form B15, *Casual Goods Accounting Document*, Form E14-1, *Request for Payment/Postal Declaration*, and Form E14-2, *Advice Notice/Postal Declaration* (notices for private and commercial postal parcels).

Accounting package

- For CADEX (Customs Automated Data Exchange) participants, the accounting package consists of customs invoices, permits, licences, certificates, and cargo control documents presented when release is requested.
- For non-participants in CADEX, the package consists of Form B3, *Canada Customs Coding Form*, related customs invoices, cargo control documents and licences, and permits or certificates not already presented at the time of release.

Admission Temporaire - Temporary Admission Permit

This document is the carnet referred to in the International Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods. It is an international document with which an importer posts security with the insurer of the carnet. The issuing body guarantees the payment of any duties and taxes if the condition of temporary importation is violated. In Canada, the Canadian Chamber of Commerce provides this document, and the Council for International Business provides it in the U.S. In Mexico, the equivalent of Canada's Chamber of Commerce provides it.

Advance ruling

This is a written document from Revenue Canada stating how it will interpret specific provisions of NAFTA concerning goods being imported into Canada from another NAFTA country.

Advertising films

For the purposes of Chapter 9, "Temporary Admission," advertising films are recorded visual media, with or without sound tracks, consisting essentially of images that show the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of any NAFTA party. The films have to be suitable to exhibit

to prospective customers but not for broadcast to the general public. Also, they have to be imported in packets that contain no more than one copy of each film and that do not form part of a larger consignment.

Agreement

This refers to the North American Free Trade Agreement.

Agricultural good

For the purposes of Chapter 1, Certification, an agricultural good means a good provided for in any of the following:

- (a) Harmonized System (HS) Chapters 1 through 24 (other than a fish or fish product); or
- (b)
- | | | |
|---------------|----------------|---|
| HS subheading | 2905.43 | (manitol) |
| HS subheading | 2905.44 | (sorbitol) |
| HS heading | 33.01 | (essential oils) |
| HS headings | 35.01 to 35.05 | (albuminoidal substances, modified starches, glues) |
| HS subheading | 3809.10 | (finishing agents) |
| HS subheading | 3823.60 | (sorbitol n.e.p.) |
| HS headings | 41.01 to 41.03 | (hides and skins) |
| HS heading | 43.01 | (raw furskins) |
| HS headings | 50.01 to 50.03 | (raw silk and silk waste) |
| HS headings | 51.01 to 51.03 | (wool and animal hair) |
| HS headings | 52.01 to 52.03 | (raw cotton, cotton waste, and cotton carded or combed) |
| HS heading | 53.01 | (raw flax) |
| HS heading | 53.02 | (raw hemp) |

(For reference only - descriptions are provided beside the corresponding tariff provision.)

B226

See "Request for redetermination."

B3

See "Form B3, *Canada Customs Coding Form*."

Bond

A bond acceptable to Revenue Canada can be a transferable bond issued by the Government of Canada or by:

- a company approved by the President of the Treasury Board as a company whose bond can be accepted by the Government of Canada;
- a member of the Canadian Payments Association;
- a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation;

- a credit union; or
- a corporation that accepts deposits from the public.

Business person

For the purposes of temporary admission, this is a citizen of a NAFTA party who trades in goods, provides services, or conducts investment activities.

CADEX (Customs Automated Data Exchange)

This system is a customs computerized data exchange that allows brokers and importers to communicate release data to Revenue Canada electronically.

Canada Customs Invoice

This document is a customs invoice (see Memorandum D1-4-1, *Invoice Requirements of Canada Customs*).

Canadian International Trade Tribunal (CITT)

This tribunal is a body responsible under Canadian legislation for findings of injury in antidumping and countervailing duty cases. Also, the tribunal provides advice to the federal government on other import issues.

Carnet

See "*Admission Temporaire - Temporary Admission Permit*."

Casual goods

These are goods that are not for resale or for any industrial, occupational, commercial, institutional, or other similar use. Essentially, casual goods are things that people import for their personal use.

Certificate of Origin

This certificate is used to substantiate NAFTA tariff treatment claimed on Form B3, *Canada Customs Coding Form*.

Chapter

Unless otherwise indicated, this term refers to a chapter of the Harmonized System (HS), indicated by the first two digits of the HS number.

CITT

See "Canadian International Trade Tribunal."

Commercial goods

These are goods imported into Canada for sale or for any industrial, occupational, commercial, institutional, or other similar use.

Commercial importation

This is the importation of a good into the territory of any NAFTA party for sale, or for any commercial, industrial, or other similar use.

Commercial samples of negligible value

For the purposes of Chapter 11, "Miscellaneous," these samples are commercial samples having a value, individually or together as shipped, of not more than US\$1, or the equivalent amount in the currency of another party, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

Commission

See "Free Trade Commission."

Conspicuous

For purposes of marking requirements, this term means capable of being easily seen with usual handling of the good or container.

Consumed

This term applies to a good that is:

- consumed; or
- processed or manufactured to result in a substantial change in value, form, or use of the good, or in the production of another good.

Container

This item is a shipping container used to transport goods. In some cases goods can reach the ultimate purchaser in a container.

Countervailing duties

These are additional duties that an importing country imposes to offset government subsidies in an exporting country, when the subsidized imports cause material injury to domestic industry in the importing country.

Country-of-origin marking

- For goods imported from a NAFTA country, this marking indicates the country of origin of the goods determined according to the *Determination of Country of Origin for the Purpose of Marking Goods (NAFTA Countries) Regulations*; and
- For goods imported from any other country, this marking indicates the country of origin of the goods determined according to the *Determination of Country of Origin for the Purpose of Marking Goods (Non-NAFTA Countries) Regulations*.

Critical-surface finish

Marking of certain types of pipes and tubes (e.g., ornamental products, and specialized products used in the aerospace industry) may constitute an unreasonable burden for technical or commercial reasons, resulting in damage to the product. In such cases, the product is considered to have a critical-surface finish.

Customs Act

This is the legislation that provides the legal framework and authority for customs procedures in Canada.

Customs administration

This refers to the competent authority that is responsible under the law of a NAFTA party for the administration of customs laws and regulations.

Customs Cargo Control Document

This refers to a document that transporters and carriers use to report cargo that is being imported. The cargo control document can be used for all modes of transport, and is Revenue Canada's initial control over the shipment until it is released.

Customs duty (for purposes of Chapter 3 of NAFTA)

This includes any customs or import duty, and any charge imposed for the importation of a good, including any form of surtax or surcharge connected to such importation, but does not include any:

- charge equivalent to an internal tax imposed consistently with article III:2 of the GATT, or any equivalent provision of a successor agreement in which all NAFTA countries participate, in respect of similar, directly competitive, or substitutable goods of the party, or for goods from which the imported good has been manufactured or produced in whole or in part;
- antidumping or countervailing duty that is applied under a NAFTA party's domestic law and applied consistently with Chapter 19 of NAFTA ("Review and Dispute Settlement in Antidumping and Countervailing Duty Matters");
- fee or other charge related to importation that reflects the cost of services rendered;
- premium offered or collected on an imported good arising out of any tendering system for the administration of quantitative import restrictions, tariff-rate quotas, or tariff-preference levels; or
- fee applied under section 22 of the U.S. *Agricultural Adjustment Act*, subject to Chapter 7 of NAFTA ("Agriculture and Sanitary and Phytosanitary Measures").

Customs Tariff Act

Canadian legislation that provides the legal framework for the collection of customs duties in Canada, including rules related to drawbacks, duty remission, and valuation.

Customs Valuation Code

This is the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade*, and its interpretative notes.

Customs value

For Canada, this means value for duty as defined in the *Customs Act*. However, to determine that value, the reference in section 55 of the Act "in accordance with the regulations made under the *Currency Act*" shall be read as a reference to "in accordance with subsection 3(1) of these regulations."

DAS

See "*Detailed Adjustment Statement*."

Date of accounting

For accounting and payment of duties, this date is when the duty was paid on the goods as indicated by the duty-paid stamp on the accounting documents (e.g., Form B3, *Canada Customs Coding Form*) presented at non-terminal offices and on Form B3-1, *Canada Customs Detailed Coding Statement*, presented at terminal offices for cash transactions. For importers, owners, or brokers who are given release before payment privileges at automated locations, the date of accounting is shown in the accounting date field on Form K84, *Importer/Broker Account Statement*.

Days

This means calendar days, including weekends and holidays.

Designated officer

This includes the tariff and values administrator (TVA) in the regions, the chief commodity specialist or the commodity specialist unit head, and officers in Assessment Programs at Headquarters.

Detailed Adjustment Statement

This is Revenue Canada's notice regarding adjustments made to importers' accounting documents.

Determination of origin

This is a determination as to whether a good qualifies as an originating good according to Chapter 4 of NAFTA.

Dispute settlement mechanism

This refers to provisions in NAFTA that provide the means to settle differences between NAFTA parties.

Drawback

This term means import duties or taxes repaid by a government in whole or in part under certain conditions, e.g., when imported goods are re-exported or used to manufacture exported goods.

Duty

See "Tariff."

Duty deferral

This refers to import duties or taxes repaid by a government in whole or in part, to a company or industry that depends on exports, manufacture in the importing country, or similar performance requirements, usually on imports of components, parts, or products to complete a product line.

Duty-free

This means free of customs duty.

E29B

See "*Temporary Admission Permit*."

Enterprise

This is any entity constituted or organized under applicable laws, whether or not for profit, and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association.

Exclusive use of the importer or that importer's employees, and not for resale to the general public

This description applies to the exclusion of imported goods of which an importer or owner, or an importer or owner's employee, is the final user. This exclusion includes goods supplied by an importer or owner to the importer or owner's employee whether free or for a charge, e.g., uniforms. This exclusion does not apply to goods for external distribution by the importer or owner, e.g., sales samples or giveaways, when they are imported from non-NAFTA countries.

Exporter in the territory of a NAFTA party

This means an exporter located in the territory of a NAFTA party and an exporter required to keep records in the territory of that party regarding exportations of a good.

F.O.B.

See "Free on board."

Form B3, *Canada Customs Coding Form*

A document that Revenue Canada uses to account for imported goods, regardless of value, destined for commercial use in Canada.

Form in which it was imported

This refers to the condition of a good before it has undergone one of the changes in tariff classification, or other applicable requirements as described in the marking rules.

Free on board

This term indicates the terms under which goods are sold for export, i.e., the price does not include insurance and freight charges.

Free Trade Commission

This commission is a body established under NAFTA, and composed of cabinet-level representatives of the NAFTA parties.

Fungible goods

These goods are interchangeable for commercial purposes and their properties are essentially identical.

Fungible materials

These materials are interchangeable for commercial purposes and their properties are essentially identical.

GATT

See "General Agreement on Tariffs and Trade."

GST

See "Goods and service tax."

General Agreement on Tariffs and Trade

This agreement is a multilateral treaty that delineates rules for international trade. Over 100 countries subscribe to it. The primary objective of GATT is to liberalize world trade and make it secure, thereby contributing to global economic growth and development.

Generally Accepted Accounting Principles

These principles represent the recognized consensus or substantial authoritative support in the territory of a NAFTA party for the recording of revenues, expenses, costs, assets, liabilities, disclosure of information, and preparation of financial statements. These standards can be broad guidelines of general application, as well as detailed standards, practices, and procedures.

Goods

This term refers to any goods for which regulations made under paragraph 63.1(1)(a) of the *Customs Tariff* apply.

Goods and services tax

This tax is the goods and services tax imposed under the *Excise Tax Act*.

Goods of a NAFTA party

This refers to domestic products as understood in the General Agreement on Tariffs and Trade and goods that the NAFTA parties may stipulate, and includes originating goods of a party.

Goods wholly obtained or produced

This includes the following goods:

- a) mineral goods extracted in the territory of one or more of the NAFTA parties;
- b) vegetable goods, as defined in the Harmonized System, and harvested in the territory of one or more of the NAFTA parties;
- c) animals born and raised in the territory of one or more of the NAFTA parties;
- d) goods obtained from hunting, trapping, or fishing in the territory of any of the NAFTA parties;
- e) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a NAFTA party and flying its flag.
- f) goods produced on board factory ships from the goods referred to in subparagraph (e), as long as such factory ships are registered or recorded with a NAFTA party and flying its flag;
- g) goods taken by a NAFTA party or a person of a NAFTA party from the seabed, or beneath the seabed outside territorial waters, as long as that party has rights to exploit such seabed;
- h) goods taken from outer space, as long as they are obtained by a NAFTA party or a person of a NAFTA party and not processed in a non-party country;
- i) waste and scrap derived from:
 - 1) production in the territory of one or more of the NAFTA parties; and
 - 2) used goods collected in the territory of one or more of the NAFTA parties, as long as such goods are fit only for the recovery of raw materials; and
- j) goods produced in the territory of one or more of the NAFTA parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production.

HS

See "Harmonized System."

Harmonized System

This refers to the Harmonized Commodity Description and Coding System. It is a GATT term used to classify commodities for tariff purposes and for rules of origin. It includes General Rules of Interpretation, Section Notes and Chapter Notes, as stated in a), the *Customs Tariff* for Canada, b) the *Tarifa de la Ley del Impuesto General de Importación* for Mexico, and c) the Harmonized Tariff Schedule of the United States for the United States. In Canada, the tariff classification number consists of ten digits. The first six digits are standardized or harmonized for all countries using the international tariff. The seventh and eighth digits distinguish breakouts for Canadian trade purposes and the last two are the statistical suffix.

Heading

This term refers to any four-digit number, or the first four digits of any number, that appears in the column "Tariff Item" in the Harmonized System.

Identical goods

These are goods that are the same in all respects, including physical characteristics, origin, quality, and reputation, except for minor differences in appearance.

Importer

This means any person who accounts for imported goods.

Importer in the territory of a NAFTA party

This means an importer located in the territory of a NAFTA party and an importer required to keep records in the territory of that party regarding importations of a good.

Indirect material

This refers to a good used in the production, testing, or inspection of a good, but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good. This material includes:

- a) fuel and energy;
- b) tools, dies, and moulds;
- c) spare parts and materials used in the maintenance of equipment and buildings;
- d) lubricants, greases, compounding materials, and other materials used in production, or used to operate equipment and buildings;
- e) gloves, glasses, footwear, clothing, safety equipment, and supplies;
- f) equipment, devices, and supplies used for testing or inspecting other goods;
- g) catalysts and solvents; and
- h) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production.

Interest costs

These are all costs that a person pays for the advancement of credit or the obligation to advance credit.

Inward processing

See "Duty deferral."

Item

This is a tariff classification item at the 8 or 10-digit level given in a NAFTA party's tariff schedule.

K32 or K32-1

Form K32, *Drawback Claim*, and Form K32-1, *Drawback Claim*, are used for drawback claims.

Legible

For marking purposes, this term means capable of being easily read.

MFN

See "Most-favoured-nation tariff."

MT

Mexico Tariff Treatment

MX

Mexico Tariff Treatment, used in field 10 of the *Certificate of Origin*.

MUST

See "Mexico-United States Tariff Treatment."

Marking

This indicates to the ultimate purchaser the country of origin of the goods.

Marking rules

The rules were established under Annex 311 of NAFTA.

Material

This refers to a good that is used in the production of another good, and includes a part or ingredient.

Mexico Tariff Treatment (MT or MX)

This treatment is a preferential tariff treatment established under NAFTA and implemented on January 1, 1994. It applies to originating goods under NAFTA that are products of Mexico. These criteria allow for some United States content and processing (see UST and MUST).

Mexico-United States Tariff Treatment (MUST)

This treatment is a preferential tariff treatment established under NAFTA and implemented on January 1, 1994. It applies to originating goods under NAFTA that are jointly produced by U.S. and Mexican producers, and are entitled neither to the Mexico Tariff (MT) because of too much U.S. content nor the United States Tariff (UST) because of too much Mexican content (see MT and UST).

Month

This means a calendar month.

Most-favoured-nation (MFN) tariff

This refers to a country's commitment to extend to another country the lowest tariff rates to any third country. All contracting parties to GATT apply MFN treatment to one another under article I of that agreement.

NAFTA

This acronym identifies the North American Free Trade Agreement involving Canada, the United States, and Mexico.

NAFTA country

This means a country that is a party to NAFTA.

NAFTA goods

For purposes of marking requirements, this refers to any goods for which the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations* apply.

NAFTA parties

These parties are Canada, the United States, and Mexico.

National

This means a national person who is a citizen or permanent resident of a NAFTA party and any other national person referred to in Annex 202.1 of NAFTA. National also includes:

- a) for Mexico, a national or a citizen according to articles 30 and 34, respectively, of the Mexican constitution; and

- b) for the United States, "national of the United States" as defined in the provisions of the *Immigration and Nationality Act*.

Net cost method

The method of calculating the regional value content of a good that is given in NAFTA.

Non-NAFTA goods

For purposes of marking requirements, these are any goods for which the *Determination of Country of Origin for the Purpose of Marking Goods (Non-NAFTA Countries) Regulations* apply.

Non-originating good

This is a good that does not qualify as an originating good.

Non-originating material

This is a material that does not qualify as originating material.

Originate or originating

These terms mean qualifying under the rules of origin set out in Chapter 4, "Rules of Origin," of NAFTA.

Originating good

This is a good that qualifies under the rules of origin given in Chapter 4, "Rules of Origin," of NAFTA.

Originating material

This is a material that qualifies as originating under the rules of origin given in Chapter 4, "Rules of Origin," of NAFTA.

Ornamental pipe and tube

These articles are generally defined as being tubular products with critical-surface finishes, and are generally used for architectural purposes (e.g., railings or cross bars for fencing (excluding fence posts)) and furniture manufacturing. When produced from carbon-steel grades, the product generally has a polished surface. Ornamental tubing may be round, square, or rectangular, or may be rolled to a variety of specialized sectional shapes depending on the final use. When determining whether tubing is ornamental in nature, consider the degree the exporter has tried to protect the surface finish (e.g., individual wrapping, protective packaging such as wooden crates, or metal containers).

Outermost usual container

This is a shipping container used to transport goods. In some cases, goods may reach the ultimate purchaser in the outermost usual shipping container.

Packaging materials

These are materials and containers in which a good is packaged for retail sale.

Packing materials

These are materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers.

Party or parties

These terms identify Canada, the United States, and Mexico.

Payments

With respect to royalties and sales promotion, this means marketing and after-sales service costs, and the costs expensed on the books of a producer, whether or not a payment is made.

Period costs

This means costs, other than product costs, that are expensed in the period in which they are incurred.

Person

This means a national, or an enterprise constituted or organized under the laws of a NAFTA country.

Point of direct shipment

This point is the location from which a producer of a direct-shipment good usually ships that good to the buyer of the good.

Preferential criteria

There are six preferential criteria, A through F, on the *Certificate of Origin*, that correspond to a category of rule of origin.

Preferential rate of duty

Members of NAFTA are entitled to reduced tariff rates of duty on each others' qualifying goods.

Preferential tariff treatment

This is the duty rate that applies to an originating good.

Printed advertising materials

For the purposes of Chapter 11, "Miscellaneous," these materials are the goods classified in Chapter 49 of the Harmonized System. The materials include brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, and tourist

promotional materials and posters, that are used to promote, publicize, or advertise a good or service, or essentially intended to advertise a good or service, and are supplied free of charge.

Producer

This is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles a good.

Product costs

These are costs that are associated with the production of a good, and include the value of materials, direct labour costs, and direct overhead.

Production

This refers to growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.

Quantitative restrictions

These restrictions are explicit limits or quotas on the physical amounts of particular commodities that can be imported or exported during a specified time period, usually measured by volume but sometimes by value. Quotas are often administered through a system of licensing.

Region

This refers to any of the following regions for which there is a Revenue Canada regional office namely:

- Atlantic
- Quebec
- Northern Ontario
- Southern Ontario
- Prairies
- Pacific

Regional value content

This applies to the rules of origin (Annex 401 of NAFTA) which require that a percentage of the good's value has to originate in a NAFTA territory.

Related person

This is a person related to another person on the basis that:

- a) they are officers or directors of one another's businesses;
- b) they are legally recognized partners in business;
- c) they are employer and employee;

- d) any person directly or indirectly owns, controls, or holds 25% or more of the outstanding voting stock or shares of each of them;
- e) one of them directly or indirectly controls the other;
- f) both of them are directly or indirectly controlled by a third person; or
- g) they are members of the same family (members of the same family are natural or adopted children, brothers, sisters, parents, grandparents, or spouses).

Repair or alteration

For the purpose of Chapter 10, "Repairs and Alterations," a repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good.

Request for a redetermination

Exporters or producers asking for a redetermination of the origin of goods imported from a NAFTA country make this request on Form B226, *Request(s) for Redetermination of the Origin of Goods Imported From a NAFTA Country*.

Reusable scrap or by-product

This means waste and spoilage that is generated by the producer of a good and used to produce a good or sold by that producer.

Rules of origin

This means the set of measures outlined in Chapter 4 of NAFTA. The measures are used to differentiate goods originating in a NAFTA country from those in another country for the purpose of applying trade measures such as tariffs.

Shipping and packing costs

These are the costs incurred in packing a good for shipment, and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale.

Subheading

This refers to any six-digit number, or the first six digits of any number, given in the column "Tariff Item" in the Harmonized System.

Sufficiently permanent

For a country-of-origin marking permanent reference, this means capable of remaining in place, unless deliberately removed, until the goods reach the ultimate purchaser or, in the case of non-NAFTA goods with no ultimate purchaser, the ultimate recipient.

Tariff

This is a duty or tax levied on goods transported from one country to another. The tariff rate is the rate at which imported goods are taxed.

Tariff classification

See "Harmonized System."

Tariff elimination

This refers to the schedules negotiated under the Canada-United States Free Trade Agreement (FTA) and the North America Free Trade Agreement (NAFTA). The schedules give the timetable for reducing the duty rate to free for goods traded among the NAFTA parties, i.e., FTA for the United States Tariff (UST), and NAFTA for the Mexico Tariff (MT) and the Mexico United States Tariff (MUST).

Tariff item

This refers to any eight-digit number given in the column "Tariff Item" in the Harmonized System.

Tariff provision

This is a heading, subheading, or tariff item.

Tariff rate quota

This is a mechanism that provides for the application of a customs duty to imports of a good up to an in-quota quantity, and at a different rate to imports of that good over that quantity.

Technical reference system number

In a decision letter, Revenue Canada will refer to this type of number.

Temporary Admission Permit

This is a form that enables an importer to import goods temporarily.

Territory

This term is defined as follows:

- a) for Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, according to international law and Canada's domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
- b) for Mexico:
 - i) the states of the federation and the federal district;
 - ii) the islands, including the reefs and keys, in adjacent seas;
 - iii) the islands of Guadalupe and Revillagigedo in the Pacific Ocean;

- iv) the continental shelf and the submarine shelf of such islands, keys, and reefs;
 - v) the waters of the territorial seas, according to international law, and Mexico's interior maritime waters;
 - vi) the space located above the national territory, in accordance with international law; and
 - vii) any areas beyond the territorial seas of Mexico within which, according to international law, including the *United Nations Convention on the Law of the Sea*, and Mexico's domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources; and
- c) for the United States:
- i) the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico;
 - ii) the foreign trade zones located in the United States and Puerto Rico; and
 - iii) any areas beyond the territorial seas of the United States within which, according to international law and United States domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

Textile and Apparel Extension of Benefit Order

This order allows the benefits of the UST and the MT to be extended to certain textile and apparel goods.

Total cost

This cost is the total of all product costs, period costs, and other costs incurred in the territory of one or more of the NAFTA countries.

Transaction value method

This is one of the methods of calculating the regional value content of a good.

TRS

See "Technical reference system."

TVA

This means the tariff and values administrator in the regions.

Ultimate purchaser

This is the last person in Canada who purchases the goods in the form in which they are imported, whether or not that purchaser is the last person to use the goods in Canada.

Ultimate recipient

This is the last person in Canada who receives the goods in the form in which they are imported.

Uniform Regulations

These are the regulations established under article 511 of NAFTA.

United States Tariff Treatment (UST)

United States Tariff is a preferential tariff treatment established under the Canada-U.S. Free Trade Agreement (FTA) on January 1, 1989. On January 1, 1994, with the implementation of the North America Free Trade Agreement (NAFTA), the criteria for UST were adjusted to allow for Mexican input and processing (see MT, MX, and MUST).

UST

See "United States Tariff Treatment."

Usual container

This is the container in which goods will ordinarily reach their ultimate purchaser.

Value

This is the value of a good or material used to calculate customs duties or to apply Chapter 4 of NAFTA.

Verification letter

This is a letter that requests information about the origin of goods that are the subject of a verification of origin.

Verification of origin

This means a verification of origin of goods under paragraph 42.1(1)(a) or subsection 42.2(2) of the *Customs Act*.

Verification questionnaire

This is a questionnaire used to obtain information about the origin of goods that are the subject of a verification of origin.

Verification visit

This is the entry into a place or premises to conduct a verification of origin of goods under paragraph 42.1(1)(a) of the *Customs Act*.

Waiver of customs duties

This is a measure that waives customs duties that apply on any good imported from any country, including the territory of another NAFTA party.

Revenue Canada's Customs Field Offices

Area	Address	Telephone/fax numbers
Atlantic	Customs Office 1557 Hollis Street P.O. Box 3080 Halifax South Postal Station Halifax NS B3J 1V6	Tel: 902-426-7982 Fax: 902-426-2768
Quebec	Customs Office 2 St-André St. P.O. Box 2267 Québec QC G1K 7P6	Tel: 418-648-3401 Fax: 418-648-3040
Montréal	Customs Office 400 d'Youville Square Montréal QC H2Y 2C2	Tel: 514-283-6332 Fax: 514-283-7500
Ottawa	Customs Office 2265 St. Laurent Blvd. Ottawa ON K1G 4K3	Tel: 613-991-0551 Fax: 613-952-7149
Toronto	Customs Office 1 Front St. West P.O. Box 10 Station A Toronto ON M5W 1A3	Tel: 416-973-6342 Fax: 416-954-5623
Hamilton	Customs Office 26 Arrowsmith Rd. P.O. Box 2989 Hamilton ON L8N 3V8	Tel: 905-308-8547 905-308-8563 Fax: 905-308-8616

Southwestern Ontario - Windsor	Customs Office P.O. Box 2280 Station A 185 Ouellette Ave. Windsor ON N8Y 4R8	Tel: 519-257-6353 Fax: 519-257-6444
Southwestern Ontario - London	Customs Office 451 Talbot St. P.O. Box 5940 Postal Station A London ON N6A 4T9	Tel: 519-645-5158 Fax: 519-645-5819
Central	Customs Office Federal Building 269 Main St. Winnipeg MB R3C 1B3	Tel: 204-983-4714 Fax: 204-983-6635
Alberta	Customs Office 720,220 - 4th Ave. S.E. Harry Hays Building Calgary AB T2G 4X3	Tel: 403-292-4660 Fax: 403-292-8856
Vancouver	Customs Office 333 Dunsmuir St. Vancouver BC V6B 5R4	Tel: 604-666-0459 Fax: 604-666-2212

For copies of Revenue Canada memoranda referred to in this manual, contact:

Canada Communications Group Publishing Centre Subscription Division Ottawa ON K1A 0S9	Tel: 819-956-4802 Fax: 819-994-1498
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NAFTA Customs Procedures Manual

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Introduction

Ratification of the North American Free Trade Agreement began the process of incorporating the general provisions of the Agreement into the specific legal and regulatory structure of each of the Parties. This process required each NAFTA country to give effect to the Agreement's provisions on customs matters within the context of its existing procedures. As a natural result of this process, the manner in which NAFTA claims are made, how negative origin determinations are appealed, etc., is somewhat different in each country. This manual is an explanation of those differences and the particular manner in which the Agreement has been implemented in each country. It is the product of a long collaboration among the customs administrations of Canada, Mexico and the United States and is intended for the benefit of traffic managers, customs brokers, importers and others active in trade under the NAFTA.

This manual has no independent legal authority. Rather, it is a reference guide indexing the customs procedures used in each country to give effect to specific NAFTA provisions. It is the intention of the Parties to update this manual annually so that it may continue to serve as a reliable reference guide to each country's customs procedures. The U.S. Customs Service welcomes your comments regarding the usefulness of this manual and suggestions for its improvement.

Chapter 1: Certification

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Chapter 1: Certification

1. Introduction

The Certificate of Origin is the fundamental document required to support a claim for NAFTA benefits. Completion of a Certificate is an affirmation that the party signing the document has researched the terms of the NAFTA and has determined that the goods covered by the Certificate are originating goods as defined by the NAFTA. Preparation of a Certificate imposes certain legal rights, obligations and liabilities on the party signing the document and should be based on a careful inquiry into the terms of the NAFTA. The Certificate must be in the possession of the importer at the time preferential treatment is claimed and shall be presented to the Area/District Director of Customs, or his or her designee, upon request.

2. Procedures

In the United States, the Certificate of Origin is printed in English on Customs Form 434. It is sold through local Customs district offices and the Government Printing Office and may also be privately printed. The Certificate may also be produced in an approved computerized format or such other medium or format as is approved by the U.S. Customs Service, Office of Trade Operations, 1301 Constitution Ave. NW, Washington, D.C. 20229. Alternative formats must contain the same information and certification set forth on Customs Form 434. Canada's and Mexico's versions of the Certificate of Origin may also be used for importations into the United States.

2.1 Completion

A Certificate must be completed and signed by the **exporter** of the goods, or by a party with power of attorney from the exporter. Producers who are not exporters may choose to prepare a Certificate and provide it to the exporter but there is no requirement that they do so and in no case will this relieve exporters of their obligation to prepare a Certificate if NAFTA preference is to be claimed. Where the exporter/producer is a legal entity such as a corporation, the person signing the Certificate must be a knowledgeable and responsible person with authority to obligate the exporter/producer. The Certificate may be completed in the language of the country of export or the language of the importing country, at the exporter's/producer's discretion. Import specialists may request a translation of the Certificate if necessary to substantiate a claim for NAFTA benefits.

Distributors and other intermediaries who neither produce the goods nor export them may not complete a NAFTA Certificate of Origin. They may, however, obtain a NAFTA Certificate of Origin from the actual producer and forward this Certificate to the exporter. Likewise, exporters may not rely on the written representations of suppliers and distributors who are not producers regarding the origin of the goods to complete a NAFTA Certificate of Origin. This is true even where the distributor or other intermediary possesses a Certificate from the actual producer of the goods. Exporters may only rely on a NAFTA Certificate of Origin or other written representation prepared by the actual producer of the goods and voluntarily provided to the exporter, or their knowledge that the goods originate.

A Certificate shall be sufficiently complete to allow the Import Specialist to establish that the goods it covers are entitled to preferential tariff treatment. Certificates are valid provided they are properly completed, signed and dated.

The information contained on the Certificate shall be printed, typed or legibly hand-written. Instructions for completion of each field on the Certificate follow.

Field 1 - Exporter name and address

The exporter is the party in Mexico or Canada that caused the goods to be exported to the United States. In most transactions, it is the party whom the buyer pays for the goods. State the exporter's legal name and complete address. The Tax Identification Number is the federal taxpayer's registry number for exporters in Mexico and the employer number or importer/exporter number assigned by Revenue Canada for exporters in Canada.

Field 2 - Blanket period

Certificates can be used to cover multiple importations of identical merchandise made during a period not to exceed one year. Field 2 of the Certificate shall be completed only if the Certificate is a blanket Certificate. "FROM" is the date upon which the Certificate becomes applicable to the goods covered by the blanket Certificate. This date may be prior to the date of signature. "TO" is the date upon which the blanket period expires. The importation of the goods must occur within the specified dates.

Field 3 - Producer's name and address

The producer is generally the party that harvests, manufactures, grows, or otherwise makes the goods. State the full legal name, address and tax identification number, as defined for Field 1, of the person or company that produces the goods. The producer's name and address that appear in Field 3 should be those of the party that maintains the

production records relating to the good, since this is the party U.S. Customs will contact to verify the origin of the goods. Thus, a parent company should not be listed in Field 3 unless that company possesses the books and records that substantiate the claim of origin made on the Certificate of Origin.

If the exporter is also the producer of the goods, state "SAME."

If the Certificate covers goods produce by more than one producer, indicate "MULTIPLE" and attach a list of producers cross-referenced to each good described in Field 5.

If the exporters do not wish to disclose the identity of the producer to the importer, it is acceptable to state "AVAILABLE TO CUSTOMS UPON REQUEST."

Field 4 - Importer name and address

The importer is usually the party in the foreign country who paid for the goods. State the full legal name, address and tax identification number, as defined for Field 1, of the importer.

If there is more than one importer, state "VARIOUS."

If the importer is unknown, state "UNKNOWN." This would often apply to a producer completing a Certificate for an exporter.

Field 5 - Description of good(s)

The description of the goods must be sufficient for an Customs Import Specialist to relate the Certificate to the imported goods. If the Certificate covers a single shipment of a good, include the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order number.

Field 6 - HS tariff classification

The Harmonized System number for each good described on the NAFTA Certificate of Origin must appear in Field 6 of the Certificate. The instructions accompanying the Certificate indicate if the good is subject to a specific rule of origin in Annex 401 that requires eight digits, the HS tariff classification should be that of the **country into whose territory the good will be imported.**

U.S. Customs District offices provide advice on the tariff classification of goods **imported** into the United States. They also provide Schedule B tariff numbers; Schedule B is the U.S. **export** schedule. Schedule B numbers coincide with numbers from the Mexican and Canadian import schedules up to the sixth digit. After the sixth digit, the Mexican and Canadian numbers differ from those of both the U.S. import and export schedules. You may purchase the Schedule B from:

Superintendent of Documents
U.S. Government Printing Office
tel: (202) 783-3238
stock no.: 903-009-00000-4
price: \$77.00

If you are a U.S. exporter filling out a Certificate of Origin, you may contact your local U.S. Customs District office (see directory which follows) to obtain a Schedule B number. The U.S. Customs Service cannot tell you the classification of your product under either Mexico's or Canada's import schedule. In most cases, the Schedule B number should be sufficient to complete the Certificate of Origin.

Occasionally, the customs administration of the importing country may disagree with the tariff classification provided by U.S. Customs. This can happen, for example, if U.S. Customs provides an HS number based solely on an oral description of the good while the customs official from the importing country has a sample of the good from the actual shipment. Also, exports may be classified by an entry clerk or other person not specialized in classification principles, and consequently export classifications may be less accurate than import classifications. Or the foreign customs official may simply believe that application of classification principles results in a different tariff classification than that provided by U.S. Customs. Moreover, if the good is subject to a specific rule of origin to the eighth digit, the six-digit number provided by U.S. Customs will not be sufficient. For these reasons, and because the official from the customs administration of Mexico or Canada will decide whether to accept or reject the Certificate of Origin, **it is advisable to obtain the HS number directly from Canada or Mexico.**

Goods imported into the United States

If you import goods into the United States, please contact an **Import Specialist** at your local Customs district office to obtain a U.S. Harmonized Tariff Schedule number.

The U.S. tariff schedule (stock number 949-009-00000-9) may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
tel: (202) 783-3238
fax: (202) 512-2250

The price is \$52 for an annual subscription (includes initial tariff and all supplements for the year).

U.S. Customs District Offices

Anchorage, Alaska	(907) 271-2675
Baltimore, Maryland	(410) 962-2666
Boston, Massachusetts	(617) 565-6147
Buffalo, New York	(716) 846-4373
Charleston, S. Carolina	(803) 727-4312
Charlotte, N. Carolina	(704) 329-0770
Charlotte Amalie, St. Thomas-Virgin Islands	(809) 774-2510
Chicago, Illinois	(312) 353-6100
Cleveland, Ohio	(216) 891-3800
Dallas/Ft. Worth	(214) 574-2170
Detroit, Michigan	(313) 226-3177
Duluth, Minnesota	(218) 720-5201
El Paso, Texas	(915) 540-5800
Great Falls, Montana	(406) 453-7631
Honolulu, Hawaii	(808) 541-1725
Houston, Texas	(713) 671-1000
Laredo, Texas	(210) 726-2267
Los Angeles, California	(310) 514-6001
Miami, Florida	(305) 876-6803
Milwaukee, Wisconsin	(414) 297-3925
Minneapolis, Minnesota	(612) 348-1690
Mobile, Alabama	(205) 441-5106
New Orleans, Louisiana	(504) 589-6353
New York Area Seaport, New York	(212) 466-5817
Kennedy Airport Area, New York	(718) 533-1542
Newark, New Jersey	(201) 645-3760
Nogales, Arizona	(602) 761-2010
Norfolk, Virginia	(804) 441-6546
Ogdensburg, New York	(315) 393-0660
Pembina, N. Dakota	(701) 825-6201
Philadelphia, Pennsylvania	(215) 597-4605

Port Arthur, Texas	(409) 724-0087
Portland, Maine	(207) 780-3326
Portland, Oregon	(503) 326-2865
Providence, Rhode Island	(401) 528-5080
St. Albans, Vermont	(802) 524-7352
St. Louis, Missouri	(314) 428-2662
San Diego, California	(619) 557-5360
San Francisco, California	(415) 705-4340
Old San Juan, Puerto Rico	(809) 729-6950
Savannah, Georgia	(912) 652-4256
Seattle, Washington	(206) 553-0554
Tampa, Florida	(813) 228-2381
Washington, D.C.	(703) 318-5900

Field 7 - Preference criterion

The NAFTA grants benefits to a variety of goods from the region. Maximum benefits are reserved for those goods that "originate" in the region. The Agreement's rules of origin establish which goods originate and preclude other goods from obtaining those benefits. It is possible for goods made in Canada, Mexico or the United States not to "originate" in the NAFTA territory, as that term is used in the Agreement.

There are six preference criteria: A through F. These letters tell Customs how the goods qualified as originating. It is impossible to choose an origin criterion without first reading and fully understanding the rules of origin contained in Article 401 of the Agreement. Persons who are completely unfamiliar with the NAFTA rules of origin should begin by purchasing "*NAFTA: A Guide to Customs Procedures*" (stock number 048-002-00119-2) from the U.S. Government Printing Office (telephone: 202-783-3238). That publication provides a general overview of the rules of origin and examples of each.

- i) **Criterion A** corresponds to goods wholly obtained or produced entirely in Canada, Mexico or the United States. Article 415 defines goods wholly produced in the NAFTA region as:
 - a) mineral goods extracted in Canada, Mexico or the United States;
 - b) vegetable goods, as such goods are defined in the Harmonized System, harvested in Canada, Mexico or the United States;
 - c) live animals born and raised in Canada, Mexico or the United States;
 - d) goods obtained from hunting, trapping or fishing in Canada, Mexico or the United States;

- e) goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with Canada, Mexico or the United States and flying its flag;
 - f) goods produced on board factory ships from the goods referred to in subparagraph e) provided such factory ships are registered or recorded with that country and fly its flag;
 - g) goods taken by Canada, Mexico or the United States or a person of these countries from the seabed or beneath the seabed outside territorial waters, provided that Canada, Mexico or the United States has rights to exploit such seabed;
 - h) goods taken from outer space, provided they are obtained by Canada, Mexico or the United States or by a person of these countries and not processed in a non-NAFTA country;
 - i) waste and scrap derived from
 - i) production in Canada, Mexico and/or the United States, or
 - ii) used goods collected in Canada, Mexico and/or the United States, provided such goods are fit only for the recovery of raw materials; and
 - j) goods produced in Canada, Mexico or the United States exclusively from goods referred to in subparagraphs a) through i), or from their derivatives, at any stage of production.
- ii) **Criterion B** Article 401(b) indicates that goods may "originate" in Canada, Mexico or the United States, even if they contain non-originating materials, if the materials satisfy the rule of origin specified in Annex 401 of the Agreement. The Annex 401 rules of origin are commonly referred to as specific rules of origin and are based on a change in tariff classification, a regional value-content requirement, or both. Annex 401 is organized by Harmonized System (HS) number, so one must know the HS number of a good to find its specific rule of origin. Annex 401 gives the applicable rule of origin opposite the HS number.

When a rule of origin is based on a **change in tariff classification**, each of the non-originating materials used in the production of the goods must undergo the applicable change as a result of production occurring entirely in Canada, Mexico and/or the United States. This means that the non-originating materials are classified under one tariff provision prior to processing and classified under another upon completion of processing. The specific rule of origin in Annex 401 defines exactly what change in tariff classification must occur for the goods to be considered "originating."

Some Annex 401 specific rules of origin require that a good have a minimum **regional value content**. A minimum regional value content means that a certain percentage of the value of the goods must be from North America. Article 402 gives two formulas for calculating the regional value content. In general, the exporter or producer may choose between these two formulas: the "transaction value" method or the "net cost" method.

- iii) **Criterion C** corresponds to goods produced entirely in Canada, Mexico and/or the United States exclusively from materials that are considered to be originating because they meet the specific rules of origin in Annex 401. Some goods that qualify as originating under criterion C may also qualify as originating under preference criteria A, B, D or E.
- iv) **Criterion D** In some cases, a good that has not undergone the required tariff change can still qualify for preferential NAFTA treatment if a regional value-content requirement is met. This NAFTA provision may only be used under two very specific circumstances. However, it may never be used for wearing apparel provided for in Chapters 61 and 62, and textile articles of Chapter 63 of the Harmonized System. The two circumstances where the provision may be used are where goods do not undergo the tariff change required by Annex 401 because:
 - the goods are imported into Canada, Mexico or the United States in an unassembled or a disassembled form but are classified as assembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or
 - the goods are produced using materials imported into a NAFTA country that are provided for as parts according to the Harmonized System, and those parts are classified in the same subheading or undivided heading as the finished goods.
- v) **Criterion E** applies to certain automatic data processing goods and their parts, specified in Annex 308.1, that do not originate in the NAFTA territory but are considered originating upon importation into the territory of a NAFTA country from the territory of another NAFTA country. Such treatment will only occur when the most-favored-nation duty rate on the good conforms to the rate established in Annex 308.1 and is common to all NAFTA countries. Currently, criterion E may only be claimed for computer parts of subheading 8473.30.
- vi) **Criterion F** applies to certain agricultural goods from Mexico only. Use criterion F if the goods are originating agricultural goods under preference criterion A, B, or C (see Field 7) and are not subject to quantitative restrictions upon their importation into the United States because they are "qualifying goods" as defined in Annex 703.2,

Section A or B (please specify). A good listed in Appendix 703.2B.7 is also exempt from quantitative restrictions and is eligible for NAFTA preferential tariff treatment if it meets the definition of "qualifying good" in Section A of Annex 703.2. A tariff rate quota is not a quantitative restriction.

Field 8 - Producer

Article 415 of the Agreement states that a producer is "a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good." State "YES" if you are the producer of the good. If you export the good, but did not produce it, indicate "NO" and then indicate on what basis you completed the Certificate of Origin. "NO(1)" indicates that you are certifying the origin of the goods based on your knowledge that the goods originate. This does not mean that the producer told you that the goods originate but that you know as a matter of personal knowledge that they originate.

State "NO(2)" if the person signing the Certificate is relying on written information from the producer (other than a Certificate of Origin) documenting that the goods are originating goods. Obviously, an exporter could not rely on a mere statement by the producer that the goods qualify as originating because such a statement would not indicate to the exporter which preference criterion to declare. The written statement from the producer must contain all information necessary to complete the Certificate of Origin.

Complete Field 8 with "NO(3)" if you are an exporter preparing the Certificate on the basis of a Certificate completed and voluntarily provided by the producer. Exporters may not complete a Certificate of Origin based on a Certificate prepared and voluntarily provided by a distributor who is not a producer. The exporter, therefore, should verify that the Certificate voluntarily provided to him was completed by the actual producer of the goods, not some other party in the chain of distribution.

Field 9 - Net cost

If your good is not subject to a regional value content requirement, indicate "NO." You will know whether your good is subject to a regional value content requirement based on your research of the rules of origin. As indicated above, it is impossible to choose an origin criterion without first reading and fully understanding the rules of origin contained in Article 401 of the Agreement.

If your good is subject to a regional value content requirement but you used the transaction value method to calculate it, also indicate "NO."

If your good is subject to a regional value content requirement and you used the net cost method to calculate it, indicate "NC." You should not indicate the regional value content as a percentage. In some cases, the exporter/producer is entitled to average certain costs over a period of time. If costs have been averaged, the starting and ending dates of the averaging period must be identified below the "NC."

Field 10 - Country of origin

For goods made in one country with no foreign inputs, determination of the country of origin is easy - it is the country of production. Increasingly, however, goods are processed in multiple countries using both domestic and foreign materials, thereby complicating determination of the country of origin. For goods imported into the United States, the country of origin on the Certificate will either be Mexico (MX) or Canada (CA). The country of origin is determined in accordance with the Marking Rules, which were published in the Federal Register (see 59 Fed. Reg. 109 and 59 Fed. Reg. 5082; TD 94-4) as new Part 102 of the Customs Regulations (19 C.F.R. 102). The Federal Register for January 3 and February 3, which contain the Marking Rules, may be purchased from the Government Printing Office (telephone: 202-783-3238) for US\$6.00 each.

It is important to establish the country of origin because the duty reductions that were negotiated under the CFTA were retained under NAFTA. Thus, a good produced both in Mexico and Canada may unquestionably originate according to the terms of Article 401, yet there may be doubts as to whether the country of origin is Mexico or Canada. 19 C.F.R. 102 will determine which is the country of origin and whether the "MX" or the "CA" rate appearing in the tariff applies. In addition, originating Canadian goods are no longer subject to the merchandise processing fee whereas Mexican goods are. Once again, Part 102 will be used to determine the origin of the goods and, consequently, whether they are subject to the merchandise processing fee.

Whenever a good undergoes processing in Canada or Mexico, Part 102 must be used to determine the country of origin of that good. Part 102 creates a "hierarchy" of rules; one proceeds through this hierarchy of rules until a condition is met and the country of origin is thereby established. For example, 19 C.F.R. 102.11(a)(1) says that if a good is wholly obtained or produced in a country, that country is the country of origin. If the country of origin cannot be determined under 19 C.F.R. 102.11(a)(1), one proceeds to 19 C.F.R. 102.11(a)(2), which states that if the good is produced exclusively from domestic materials (i.e., materials whose country of origin as determined under the Marking Rules is the same country of origin as the country in which the good is produced), that country is the country of origin. If origin cannot be determined under 19 C.F.R. 102.11(a)(2), one continues through the hierarchy until a condition is met and the origin established. Traders should consult 102.11 for this hierarchy of rules. If application of the rules in 19 C.F.R. 102 does not result in the determination that the country of origin is Mexico or Canada, the Certificate of Origin should not be completed.

Field 11 - Certification

Persons completing Certificates of Origin are strongly advised to read and fully comprehend exactly what they are certifying by signing and completing Field 11. Completion of a Certificate of Origin imposes certain legal rights, obligations and liabilities on the party signing the document and should be based on a careful inquiry into the terms of the NAFTA.

2.2 Scope

A Certificate is required for each importation and covers only those goods specified on the Certificate. A single Certificate may be used for:

- a single shipment of goods that results in the filing of one or more entries on the importation of the goods into the customs territory of the United States; or
- more than one shipment of goods that results in the filing of one entry on the importation of the goods into the customs territory of the United States.

Blanket Certificates can be used to cover multiple importations of identical merchandise made during a period not to exceed one year. Field 2 of the Certificate shall be completed if the Certificate is a blanket Certificate. "FROM" is the date upon which the Certificate becomes applicable to the goods covered by the blanket Certificate. This date may be prior to the date of signature. "TO" is the date upon which the blanket period expires. The importation of the goods must occur within the specified dates.

2.3 Submission

The Certificate of Origin need only be submitted upon the request of the Customs Service. Customs Import Specialists shall request the Certificate of Origin as they deem appropriate to substantiate claims for preferential NAFTA treatment, allowing a reasonable amount of time for the importer to produce the Certificate. In most cases, a Customs Form 28 ("Request for Information") will be used to request the Certificate of Origin and a reasonable amount of time will be 30 days.

2.4 Validity

Certificates that are not signed and dated, or are otherwise defective on their face, are not valid. The Import Specialist shall notify the importer via Customs Form 29 ("Notice of Action") to submit a corrected copy of the Certificate or the claim for preferential tariff treatment will be denied. The importer will be given at least 5 working days from the date of mailing to submit a corrected Certificate.

Certificates are valid for four years from the date on which they were signed.

2.5 Waivers

As indicated in 19 C.F.R. 181.22(d), and on a case by case basis, Area/District Directors may waive the requirement that the importer possess a valid Certificate at the time a NAFTA claim is made. Area/District Directors shall require that requests for waivers be in writing and shall respond to such requests in writing.

2.6 Certificate not required

In accordance with Article 503 of the Agreement, Customs does not require a Certificate for non-commercial importations nor for commercial importations with a total value of US\$2500 or less (regardless of whether the entry is formal or informal). \$2500 refers to the total value of the importation, not the value of the NAFTA merchandise. For commercial shipments, however, the invoice accompanying the importation shall include a statement certifying that the goods qualify as originating goods, as prescribed in 19 C.F.R. 181.22(d). Area/District Directors may require a valid Certificate before allowing NAFTA treatment if they reasonably determine that a series of importations was used instead of a single importation to evade the requirement to obtain a Certificate of Origin.

2.7 Recordkeeping

The exporter is required to retain a copy of the Certificate (or the original) for five years (or for such longer period as Canada or Mexico may specify for exporters located in their territories) from the date of signature. The facts asserted in the Certificate must be supported by adequate records relating to the good, its materials and production. Customs may deny a claim if the exporter/producer or their agents do not provide additional supporting information when requested.

2.8 Customs processing

Import Specialists shall deny claims, and may assess penalties, if they determine that an importer did not possess a valid Certificate of Origin at the time the claim for preferential NAFTA treatment was made.

Import Specialists shall request copies of Certificates of Origin, and translations thereof, as necessary to substantiate claims for preferential NAFTA treatment. Customs shall give importers a reasonable amount of time to submit a copy of the Certificate, generally 30 days.

If the Certificate contains inadequate information, is unsigned, or is otherwise defective on its face, the Import Specialist will advise the importer to submit a corrected Certificate. Since a Certificate that is defective on its face is invalid, denial of the claim in these

circumstances is not an "origin determination" and there is no need to notify the exporter.

If the importer fails to submit a copy of the Certificate after a request from Customs, the Import Specialist may deny the claim for NAFTA benefits. False statements may result in denial of the claim and assessment of penalties as provided by law.

2.9 Responsibilities

An exporter or producer who completes and signs a Certificate of Origin, and who has reason to believe that the Certificate contains information that is not correct, shall promptly notify in writing all persons to whom he or she gave the Certificate of any change that could affect the accuracy or validity of the Certificate.

For goods covered by a blanket certification, it is the exporter's responsibility to advise the importer of any significant changes in sourcing materials or production methods and furnish the importer with a new certificate. Producers who voluntarily provide a Certificate to an exporter must notify the exporter of any changes in sourcing or production methods.

An importer who receives information that a Certificate is inaccurate or invalid must make a corrected declaration of origin within 30 days of discovery, and pay any duties owing, provided the liquidation of the entry summary is not yet final. Failure to correct a declaration that is known to contain inaccurate information may result in the assessment of penalties.

3. References

Customs Directive 099 3280-015, "Certificate of Origin for the North American Free Trade Agreement (NAFTA)," dated March 14, 1994.

4. Additional information

- Articles 501-504
- 19 C.F.R. 181, Subpart C

Chapter 2: Marking

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Chapter 2: Marking

1. Introduction

Annex 311 of the NAFTA directs the Parties to establish "Marking Rules," which will be used to determine whether a good is a good of a Party, and for such other purposes as the parties may agree. The United States published Marking Rules in 59 Federal Register 109 and 59 Federal Register 5082, for the purposes of (1) country of origin marking, (2) determining the rate of duty and staging category applicable to originating textile and apparel goods of Annex 300-B of the NAFTA, and (3) for determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 of the NAFTA. These Marking Rules were published as Interim Customs Regulations Part 102 (19 C.F.R. 102). Final rules will be published, under part 102, after review and analysis of public comments.

Chapter 2 outlines the procedures to be followed by the U.S. Customs Service for determining the country of origin, rates of duty and staging categories as noted above, for all goods imported from Canada and Mexico (assuming they have undergone some production in those countries). In addition, originating Canadian goods are no longer subject to the Merchandise Processing Fee (MPF) whereas Mexican goods are. 19 C.F.R. 102 will be used to determine the country of origin of the goods and, consequently, whether they are subject to MPF.

2. Procedures

2.1 Hierarchy of Marking Rules

Whenever a good undergoes processing in Canada or Mexico, 19 C.F.R. 102 must be used to determine the country of origin of that good. 19 C.F.R. 102.11 provides a "hierarchy" of rules; one proceeds through this hierarchy of rules until a condition is met and the country of origin is thereby established, as follows. **In other words, none of the hierarchical Marking Rules can be used unless the preceding ones have failed to determine a country of origin.** For ease of reference, the letter-number designations shown here correspond to the appropriate subsections of 19 C.F.R. 102.11.

- (a)(1) If the good is wholly obtained or produced in one country, that country is the country of origin. The term "A Good Wholly Obtained or Produced" is defined in 19 C.F.R. 102.1(g).

Example

Ceramic tile from Mexico, produced entirely from Mexican clay materials. The article is "wholly produced" in Mexico.

- (2) If the good is produced exclusively from "domestic materials" (materials whose country of origin as determined under the Marking Rules is the same country of origin as the country in which the good is produced), that country is the country of origin.

Example

A desk is produced in Canada from Canadian lumber and from hardware which was produced in Canada from imported steel and which under the Marking Rules became a product of Canada. The desk is produced in Canada "exclusively from domestic materials," i.e., from the wholly-grown lumber and the Canadian-made steel hardware.

- (3) If each foreign material incorporated in the good undergoes an applicable change in tariff classification set out in the specific rules contained in section 102.20 ("Specific Rules by Tariff Classification"), the country in which the materials undergo these changes is the country of origin.

Example

Textile covered rubber thread is classified in heading 5604. The product was made in Mexico from Taiwanese synthetic yarn of HS 5509 and Malaysian rubber thread of HS 4007. The "Specific Rule by Tariff Classification" for goods of heading 5604 states:

"A change to heading 5602 through 5605 from any heading outside that group."

Because this change did occur in Mexico, the country of origin is Mexico based on Marking Rule (a)(3).

- (b)(1) The country of origin for a good which is not classified under the Harmonized System as a set, is the country or countries of the single material that imparts the essential character of the good. 19 C.F.R. 102.18(b)(2) provides that, for purposes of this section, only domestic and foreign materials that are classified in a provision from which a change in tariff classification is not allowed under 19 C.F.R. 102.20 shall be considered.
- (2) If, however, that single material is from multiple source countries and is fungible and commingled, and direct physical identification is impractical, an approved inventory management method can be used to determine the country or countries of origin. (The available methods are the specific identification method, the FIFO method, the LIFO method or the average method. See 19 C.F.R. 181.131 Appendix for definitions.)

Example

Carbon paper of HS 4816 is made in Mexico from Brazilian paper of HS 4809. The Specific Marking Rule for this paper is:

"A change to heading 4816 from any other heading, except from heading 4809."

Because the single material that gives this good its essential character is the Brazilian paper, the country of origin of the good is Brazil, based on Marking Rule B.

- (c) For goods that are classified as sets, or for goods classified as mixtures or composite goods pursuant to General Rule of Interpretation 1 or 3, for which no single material imparts the essential character, the country of origin is the country or countries of origin of **all** materials that merit equal consideration for determining the essential character of the good.

Example

A packaged set of cutlery and dinnerware is classified in HS 8215.20. It has been assembled in Mexico from a Mexican-made plastic case of HS 3923.10, twelve Japanese knives of HS 8211.91, twelve Korean forks of HS 8215.99, and twelve Taiwanese spoons of HS 8215.99. The Specific Marking rule is:

"A change to heading 8201 through 8215 from any other chapter."

The set fails to satisfy this rule. Using Rule C, the countries of origin of set are Mexico, Korea and Taiwan. (The plastic case from Japan does not merit "equal consideration" in determining country of origin.)

- (d)(1) The country of origin is the last country where the good underwent production other than by "simple assembly" or "minor processing."

If the good is assembled from five or fewer parts originating in different countries, the country of origin will be the country of assembly.

- (2) If the good is assembled from five or fewer parts, all of which have the same country of origin, the country of origin will be the country of origin of the parts assembled into the good that merit equal consideration as imparting the essential character of the good.

2.2 Other factors in determining country of origin

19 C.F.R. 102.12 through 102.19 provide other factors to consider when applying the Marking Rules in determining the country of origin for goods that underwent processing in a NAFTA country. 19 C.F.R. 102.13, 102.15, 102.16 and 102.17 should be considered when applying the specific tariff rules in 102.20 for purposes of determining origin under 102.11(a)(3).

19 C.F.R. 102.12 discusses country of origin determination for commingled fungible goods where multiple countries of origin are involved. 19 C.F.R. 102.13 discusses the treatment of goods for which small ("de minimis") amounts of foreign materials fail to undergo tariff changes prescribed in the Marking Rules.

19 C.F.R. 102.14 indicates that goods which are advanced in value or improved in condition outside the U.S. will not be considered products of the U.S. So, if under another section of the Marking Rules, the country of origin of such a good is determined to be the U.S., that determination will be disregarded, and the country of origin of such a good will be the country in which the good was last advanced in value or improved in condition.

19 C.F.R. 102.15 specifies materials (such as packaging, accessories that are classified with the good, etc.) that are disregarded in determining whether the "Specific Rules by Tariff Classification" (19 C.F.R. 102.20) have been met.

19 C.F.R. 102.16 prescribes that (except for chapter 50-63 textile products), when a change in tariff classification rule (19 C.F.R. 102.20) cannot be met because the good and its parts are classified in the same heading or subheading, significant operations can still confer origin, when such operations result in a new and different article, having a new name, character and use.

19 C.F.R. 102.17 lists certain "non-qualifying operations" such as dismantling, disassembly, simple packing, or mere dilution with water, that by themselves would not change the country of origin, even if they result in the required changes in tariff classification. It also includes an anti-circumvention rule, which disqualifies any operation, the sole object of which is to circumvent the proper operation of the Marking Rules.

19 C.F.R. 102.18 provides Rules of Interpretation for the Marking Rules.

19 C.F.R. 102.19 states that for an originating good covered by a NAFTA Certificate of Origin, if the first two Marking Rules (19 C.F.R. 102.11 (a) or (b)) determine that the country of origin is not a single NAFTA country, the country of origin will nevertheless be the last NAFTA country in which the good underwent production other than minor processing.

2.3 Advance rulings

Binding rulings on the country of origin of a good, as determined under 19 C.F.R. 102, may be requested in accordance with 19 C.F.R. 181.93. Rulings may be requested by an importer in the United States or by an exporter or producer of a good in Canada or Mexico.

2.4 Adverse marking decisions

Under most circumstances, Customs will make a decision on the acceptability of marking at the time of entry, for merchandise imported into the United States. If the decision is that the country of origin is the one designated on the entry (and marked on the merchandise, if required), the merchandise will be released and the entry will be liquidated, with no formal notification other than the routine notice of liquidation. If the decision is that the country of origin is other than that declared on the entry, the action taken by Customs will depend on the circumstances of the importation. If the only impact is on the marking of the merchandise, the importer will be notified via Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), or by one of the other methods described under Section B 3.6, below.

19 C.F.R. 181.111 through 181.116 provide procedures that can be followed when Customs issues an adverse marking decision. An importer who receives such a decision may protest it under the procedures set out in 19 C.F.R. 174. An exporter or producer whose good is the subject of a marking decision may not protest such a decision, but may request from Customs a statement concerning the basis for such a decision, under procedures detailed in 19 C.F.R. 181.113 and 181.114. If the importer files a protest, an exporter or producer may "intervene" in that protest by filing an written statement of intervention which Customs attaches to the protest. However, though such a statement may be filed, the exporter's or producer's rights in the act of intervention remain subordinate to the importer's protest rights.

Under 19 C.F.R. 181.116, the exporter and producer also have certain rights to "petition" an adverse marking decision. However, as detailed in the cited Section, the petition may not be filed until after the importer's time to protest the adverse decision has expired, or after final action on a protest, when the petitioner was given notice of the pending protest. If the importer has filed a protest, notice of which was not provided to the petitioner under 19 C.F.R. 181.114, the petition will be treated as an "intervention."

2.5 Country of origin marking

Annex 311 of the NAFTA sets forth general marking principles pertaining to the methods and procedures relating to the country of origin marking of goods of NAFTA countries. The United States, in 58 Federal Register 69459, published interim changes to 19 C.F.R. 134 to implement changes required by NAFTA.

2.5.1 Articles subject to marking requirements

Unless excepted by law, every article of foreign origin (or its container) imported into the U.S. must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the U.S. the English name of

the country of origin of the article, at the time of importation into the U.S. A good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish. However, any other required information must be printed in English.

Generally, the "ultimate purchaser" is defined as the last person in the United States who will receive the article in the form in which it was imported. However, for a good of a NAFTA country, the "ultimate purchaser" is the last person in the U.S. who purchases the good in the form in which it was imported.

19 C.F.R. 134.11 through 134.14 provide further details on the marking requirements for foreign articles re-shipped from a U.S. possession, for imported articles repacked or manipulated, and for articles usually combined with other articles before delivery to a purchaser.

2.5.2 Exceptions to marking requirements

19 C.F.R. 134.31 through 134.36 provide exceptions to the marking requirements. These exceptions include a list of general exceptions, a list of specific products that are excepted (the "J-List", found in 19 C.F.R. 134.33), certain repacked articles, and articles that are substantially changed by manufacture. Additionally, goods of a NAFTA country that are original works of art, or that are classified under U.S. Harmonized Tariff Schedule (HTS) subheading 6904.10 or heading 8541 or 8542 are also excepted from the marking requirements.

It is notable that the list of general exceptions includes several references to the "ultimate purchaser." As noted above, the "ultimate purchaser" is generally defined as the last person in the United States who will receive the article in the form in which it was imported. However, for a good of a NAFTA country, the "ultimate purchaser" is the last person in the U.S. who purchases the good in the form in which it was imported.

One of the general exceptions to the marking requirements is for "articles for which the ultimate purchaser must necessarily know the country of origin by reason of the circumstances of (the goods') importation or by reason of the character of the articles even though they are not marked to indicate their origin." For goods of a NAFTA country, the phrase "must necessarily know the country of origin" is replaced by the phrase "must reasonably know the country of origin."

2.5.3 Marking of containers or holders

19 C.F.R. 134.21 through 134.26 provide marking requirements and exceptions for containers or holders. In general, imported containers are treated the same as other imported articles in that they must be marked with their own country of origin. Exceptions are made for containers which are imported for use by the importer and not intended for sale, for containers to be processed in the U.S. by the importer or for his account, and for containers for which the ultimate purchaser must necessarily know the country of origin by reason of the circumstances of importation or the character of the articles, as detailed in 19 C.F.R. 134.32 (f), (g), and (h).

For containers which are goods of a NAFTA country, however, there is a broader exception for any container which is a "usual container," which is defined in 19 C.F.R. 134.22 as a container in which a good will ordinarily reach its ultimate purchaser. Such a container, whether or not it is disposable and whether or not it is imported empty or filled, if it is a good of a NAFTA country, is not required to be marked with its own country of origin.

Usual disposable containers that are in use as such at the time of importation must be marked to indicate the country of origin of their contents. There are exceptions to this rule where those contents are imported for use by the importer and not intended for sale, are to be processed in the U.S. by the importer or for his account, or are goods for which the ultimate purchaser must necessarily know the country of origin by reason of the circumstances of importation or the character of the articles, as detailed in 19 C.F.R. 134.32 (f), (g), and (h). For such containers which are goods of a NAFTA country, however, in addition to these exceptions, there are more exceptions which are listed in 19 C.F.R. 134.32 (e), (i), (p) and (q) (for crude substances, articles produced more than 20 years prior to importation, original works of art, and HTS items 6904.10, 8541 or 8542).

2.5.4 Method and location of marking

19 C.F.R. 134.41 outlines methods of marking of imported goods. Generally, the marking must be legible, indelible and permanent. The degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on an article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed.

19 C.F.R. 134.43(a) requires certain very specific methods of marking for certain products such as knives, forks and scissors. However, if such goods are goods of a NAFTA party, they can be marked by any reasonable method which is legible, conspicuous and permanent as would otherwise be required in 19 C.F.R. 134.

Similarly, 19 C.F.R. 134.43(c) and (d) provide for specific marking methods for certain native-American goods, unless those goods are goods of a NAFTA party.

2.5.5 Adverse marking decisions

Under most circumstances, Customs will make a decision on the acceptability of marking at the time of entry, for merchandise imported into the United States. If the decision is that the merchandise is properly marked, the merchandise will be released and the entry will be liquidated, with no formal notification other than the routine notice of liquidation. If the decision is that the merchandise is not properly marked, the importer will be notified via Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), or by one of the other notification methods outlined under section 3.6 below.

19 C.F.R. 181.111 through 181.116 provide procedures that can be followed when Customs issues an adverse marking decision. An importer who receives such a decision may protest it under the procedures set out in 19 C.F.R. 174. An exporter or producer may not protest such a decision, but may request from Customs a statement concerning the basis for such a decision, under procedures detailed in 19 C.F.R. 181.113 and 181.114. If the importer files a protest, an exporter or producer may "intervene" in that protest by filing an written statement of intervention which is attached to the protest. However, though such a statement may be filed, the exporter's or producer's rights in the act of intervention remain subordinate to the importer's protest rights.

Under 19 C.F.R. 181.116, the exporter or producer also have certain rights to "petition" an adverse marking decision. However, as detailed in the cited Section, the petition may not be filed until after the importer's time to protest the adverse decision has expired.

2.5.6 Merchandise found not legally marked

In cases where merchandise is imported which does not comply with marking requirements, Customs may issue a Customs Form 4647 Notice of Marking (or a Notice of Redelivery if the goods have been released), impose marking duties, seize such merchandise, or establish claims for liquidated damages and/or claims for monetary penalty. The action taken depends on the individual circumstances surrounding the import transaction. Generally, cases involving failure to comply with marking requirements fall into one or more of the following four categories:

- The merchandise is not properly marked at the time of entry.
- There are false, deceptive and/or misleading markings on the imported merchandise and/or its containers.
- There is a false certification that the imported merchandise and/or its container are properly marked, or there is a failure to notify subsequent purchasers or repackers of the marking requirements.
- The imported merchandise and/or its container comply with the marking requirements at the time of entry, but there is subsequent removal or alteration of the marking.

Customs Directive 099-4410-003, "Labeling and Marking Requirements - Guidelines for Seizures and Penalties," dated May 11, 1987, provides procedures that are followed for each of these circumstances. Customs Directive 099 3540-001, "Revised Notice to Mark and/or Notice to Redeliver Customs Form 4647," dated March 17, 1992 provides instructions for completion of Customs Form 4647 ("Notice to Mark and/or Notice to Redeliver").

2.5.7 Advance rulings

Binding rulings on the country of origin marking requirements for a good under 19 C.F.R. 134, may be requested in accordance with 19 C.F.R. 181.93. Rulings may be requested by an importer in the United States or an exporter or producer of a good in Canada or Mexico.

3. References

Customs Directive 099 4410-003, "Labeling and Marking Requirements - Guidelines for Seizures and Penalties," dated May 11, 1987.

Customs Directive 099 3540-001, "Revised Notice to Mark and/or Notice to Redeliver Customs Form 4647," March 17, 1992.

4. Additional information

- Article 311
- Annex 311
- 19 C.F.R. 102
- 19 C.F.R. 134
- 19 C.F.R. 174

Chapter 3: Advance Rulings

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Chapter 3: Advance Rulings

1. Introduction

The U.S. Customs Service strongly urges all parties engaged in transactions relating to the importation of goods into the United States to obtain binding advice from the U.S. Customs Service prior to undertaking that transaction. In the case of importations under the NAFTA, guidance can be obtained by requesting an advance ruling in accordance with Part 181, Subpart I of the Customs Regulations.

2. Procedures

2.1 Subject matter

In compliance with its obligation under Article 509, the U.S. Customs Service will issue advance NAFTA rulings on:

- Whether materials imported from a non-NAFTA country and used in the production of a good undergo an applicable change in tariff classification under the rules of origin as a result of production occurring entirely in the NAFTA territory;
- Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method;
- Determining whether a good satisfies a regional value-content requirement, the appropriate basis or method for value to be applied by an exporter or a producer in Canada or Mexico for calculating the transaction value of the good or of the materials used in the production of the good;
- Determining whether a good satisfies a regional value-content requirement, the appropriate basis or method for reasonably allocating costs for calculating the net cost of the good or the value of an intermediate material;
- Whether a good qualifies as an originating good under the rules of origin;
- Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment;
- Whether the proposed or actual marking of a good satisfies country of origin marking requirements;
- Whether an originating good qualifies as a good of Canada or Mexico under Annex 300-B, Annex 302.2 and Chapter Seven of the NAFTA; and
- Whether an agricultural good is a qualifying good under Chapter 7 of the NAFTA.

Advance rulings may be requested with respect to prospective, current and ongoing NAFTA transactions. Advance rulings may not be requested on questions arising in connection with an entry of goods that has been liquidated, or in connection with any other completed NAFTA transaction.

2.2 Difference from other kinds of binding rulings issued by U.S. Customs

Binding and pre-classification rulings under Title 19, Code of Federal Regulations, Part 177 (19 C.F.R. 177) will not be issued for the nine subject matter areas previously noted. Rulings on these topics must be requested in accordance with 19 C.F.R. 181, Subpart I. Questions outside these nine subject matter areas relating to applicability of the NAFTA may be the subject of a binding or pre-classification ruling requested under 19 C.F.R. 177.

2.3 Who may request

Importers in the United States and exporters and producers in Canada and Mexico who export their goods to the United States may request advance NAFTA rulings from U.S. Customs. Exporters in the United States who export to Canada or Mexico may not request advance rulings from the U.S. Customs Service; they should request advance rulings from the customs administrations of Canada and Mexico on how their goods will be treated upon entering the commerce of these countries.

2.4 Submission of requests

In the United States, advance rulings must be requested in accordance with the procedures described in 19 C.F.R. 181.93. Requests must be written in English and must contain a complete statement of all relevant facts relating to the NAFTA transaction. Such facts include: the names, addresses and other identifying information of all interested parties (if known); the name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling.

Requests for advance rulings shall be accompanied by photographs, drawings, or other pictorial representations of the good and, whenever possible, by a sample of the good unless a precise description is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CA number, and related information. Samples become part of the Customs file and will be retained until the advance ruling is issued or the advance ruling request is otherwise disposed of. All or part of a sample may be damaged or consumed

in the course of examination, testing, analysis, or other actions undertaken in connection with the advance ruling request. If the question presented in the advance ruling request directly relates to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted. (Original documents should not be submitted since they will not be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question presented, must be expressly set forth in the advance ruling request.

Interested parties should consult 19 C.F.R. 181.93(b)(2) for guidelines on what details are needed for each of the subject matter described above.

Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party) must be identified clearly, and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party), must be set forth. An advance ruling will not be issued until all trade secret, privilege or confidentiality issues are resolved.

2.5 Oral discussion of issues

A person submitting a request for an advance ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the advance ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in an advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

The person submitting the request for an advance ruling must provide for inclusion in the Customs file a written record setting forth any and all additional information, documents,

and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.

2.6 Where to send requests

Advance rulings on subject matter specified in 2.1 must be requested from the U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, NW, Washington, D.C. 20229. Requests for advance rulings on remaining subject matter may be directed either to the Office of Regulations and Rulings, 1301 Constitution Avenue, NW, Washington, D.C. 20229, or to the Area Director of Customs, New York Seaport, 6 World Trade Center, New York, NY 10048.

2.7 Request for immediate consideration

Customs will normally process requests for advance rulings in the order they are received and as expeditiously as possible, as specified in § 181.99. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted or thereafter, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram or electronic transmission will be treated in the same manner as requests made by letter, but advance rulings will not be issued by telegram or electronic transmission. A telegram or electronic transmission must be followed up with a signed original within 14 calendar days of the submission of the telegram or electronic transmission. In no event can any assurance be given that a particular request for an advance ruling will be acted upon by the time requested.

2.8 Issuance of advance rulings

Generally Customs will, within 120 calendar days of receipt of a request in proper form, including any required supplemental information, issue an advance ruling letter in English setting forth the position of Customs and its reasoning with respect to a specific transaction. Requests for an advance ruling that do not contain adequate information will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no advance ruling can be issued. In the course of evaluating the advance ruling request Customs may solicit supplemental information from the person requesting the advance ruling. The submission of supplemental information will extend the time for response. The time for response will also be extended if it is necessary to obtain information from other government agencies or to perform a laboratory analysis.

2.9 Submission of NAFTA advance ruling letters to field offices

Any importer with respect to which an advance ruling letter has been issued either must ensure that a copy of the advance ruling letter is attached to the documents filed with the appropriate Customs office in connection with that transaction or must otherwise indicate that an advance ruling has been received. Any person receiving an advance ruling stating Customs determination must set forth such determination in the documents or information filed in connection with any subsequent entry of that merchandise; failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. An advance ruling received after the filing of such documents or information must immediately be brought to the attention of the appropriate Customs field office.

2.10 Disclosure of NAFTA advance ruling letters

No part of an advance ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure unless the information claimed to be exempt from disclosure is clearly identified and a valid basis for nondisclosure is set forth. Before the issuance of the advance ruling letter, the person submitting the advance ruling request will be notified of any decision adverse to a request for nondisclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the advance ruling request. If in the opinion of Customs an impasse exists on the issue of confidentiality and the person who submitted the advance ruling request does not withdraw the request, Customs will decline to issue the advance ruling. All advance ruling letters issued by Customs will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

2.11 Penalties for misrepresentation, omission or noncompliance

If Customs determines that an issued advance ruling was based on incorrect information, the person to whom the advance ruling was issued may be subject to appropriate penalties unless that person demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based. In addition, Customs may apply such measures as the circumstances may warrant in a case where a person to whom an advance ruling was issued has failed to act in accordance with the terms and conditions of the advance ruling.

3. References

NAFTA ADVANCE RULINGS, Customs Publication 594.

4. Additional information

- Article 509
- 19 C.F.R. 181, Subpart I

Chapter 4: Entry

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Chapter 4: Entry

1. Introduction

Existing entry procedures in the United States will not change as a result of the Agreement. Importers must file entry documentation within five working days of the arrival of a shipment at the port of entry. Importers must then file an entry summary and deposit estimated duties within 10 working days of the time the goods are entered and released. A detailed explanation of the entry process is available in **IMPORTING INTO THE UNITED STATES**, Customs Publication 504, available from the U.S. Government Printing Office.

2. Procedures

2.1 Automated Commercial System

The Automated Commercial System is the comprehensive tracking, controlling and processing system of the U.S. Customs Service. It is used to track the movement of cargo, accept entries and protests, receive payment of duties, and for many other aspects of international customs transactions. The Automated Commercial System consists of many different modules, also referred to as systems. These modules can work independently of one another, interact with one or more additional modules, or provide an interface between separate modules. Some modules are for internal Customs use only, while others are used to interact with other international actors, such as customs brokers, importers, shipping lines and sureties.

The Automated Broker Interface is one component of the Automated Commercial System. The Automated Broker Interface permits qualified participants to interface directly with the U.S. Customs Service Data Center in order to transmit data pertaining to merchandise being imported into the United States, including the filing of entries and entry summaries. In some cases, the electronic transmission of the entry and/or entry summary is followed up by the submission of paper documents. Increasingly, however, all Customs business is conducted electronically. Brokers can also query the status of an entry or entry summary via the Automated Broker Interface to determine, for example, whether the cargo has been released or whether the entry summary has been accepted by Customs.

2.2 Claims

In the United States, Customs Form 3461 or 3461-Alt is used to enter goods. The entry summary is filed within 10 working days on Customs Form 7501. A claim for preferential tariff treatment for a good under the NAFTA is made by using the Special Program Indicator (SPI) "CA" for products of Canada or "MX" for products of Mexico as a prefix to the Harmonized Tariff Schedule number on Customs Form 7501 or during the electronic transmission of the entry summary data via the Automated Broker Interface. The Certificate of Origin must be in the possession of the importer at the time preferential tariff treatment for an originating good is claimed.

Importers claiming preferential tariff treatment for textile goods under a tariff preference level (described in Annex 300-B of the NAFTA) and for articles altered or repaired (Harmonized Tariff Schedule numbers 9802.00.40 and 9802.00.50) will not have a Certificate of Origin since these goods are not originating (as that term is defined in Article 401 of the Agreement). Importers must identify shipments of goods whose regional value content was calculated using the net cost method by transmitting the net cost indicator during the Automated Broker Interface transmission and by annotating the entry summary with "NET" in Column 33 of Customs Form 7501.

2.3 User fees

Goods originating in Canada, that qualify to be marked as Canadian goods according to the marking rules, are exempt from the merchandise processing fee as of January 1, 1994. For goods originating in Mexico that qualify to be marked as Mexican goods pursuant to Annex 311, the merchandise processing fee will be eliminated on June 30, 1999. There will not be any staged phase-out of the fee for Mexican goods - it will continue to apply until June 30, 1999, when it will be eliminated completely. Other fees are unaffected and will be collected whether the goods originate in Canada or Mexico. Other fees include harbor maintenance, cotton, beef, pork, honey, etc. Mail entries will continue to be subject to a US\$5 processing fee.

The Automated Commercial System recognizes when no merchandise processing fee is due by comparing the declared country of origin, the Special Program Indicator and the tariff classification number transmitted electronically and will reject any entry for which payment of the merchandise processing fee is attempted.

3. References

Customs Directive 099 3550-061, "Instructions for Preparation of CF 7501," dated September 18, 1992.

Customs Directive 099 3550-061, "Instructions for Preparation of CF 7501," dated September 18, 1992.

4. Additional information

- Article 502
- 19 C.F.R. 141



Chapter 5: Post Importation Claims and Corrections

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Chapter 5: Post Importation Claims and Corrections

1. Introduction

In order to receive preferential treatment under NAFTA, the Certificate of Origin must be in the possession of the importer at the time the claim is made. In some instances the Certificate is not available at the time the claim is made or the importer was not aware the goods qualified for preferential treatment therefore the merchandise was entered at the most-favored nation (MFN) rates of duty. The importer has the option of filing a post importation claim requesting a refund of the duties paid up to one year from the date of importation.

2. Procedures

2.1 Filing

A post importation claim must be filed in writing with the Area/District Director of the port where the goods were entered within one year from the date of importation. The claim must contain the following information:

- A declaration stating that the good qualified for preferential treatment at the time of importation and the appropriate entry number and date covering the good;
- A copy of each Certificate of Origin pertaining to the good unless the Certificate of Origin was not required under 19 C.F.R. 181.22(d)¹;
- A statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If so, the recipient is to be identified by name, Customs identification number and address and the date the documentation was provided;
- A statement furnishing whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 (Restriction on Drawback and Duty-Deferral Programs) of the NAFTA. If the importer is aware of any such claim, identify each claim by number and date and the person who made the claim by name, Customs identification number and address; and
- A statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law. If such protest or petition or request for reliquidation has been filed, identify the protest, petition or request by number and date.

2.2 Processing claims

Upon receipt of a post importation claim the Area/District Director must determine whether the entry covering the good has been liquidated, and if liquidation has taken place, whether the liquidation has become final. Post importation claims under NAFTA are to be entered into the Automated Commercial System (ACS) through the protest module (PMAA and PMBA) and identified by the associated entry summary along with typing "NAFTA claim under 520(d)" in the remarks field.

2.2.1 Retrieval of entry summary for processing

Unliquidated

- If the entry summary is unliquidated and not scheduled for liquidation, the claim shall be forwarded to the appropriate commodity specialist team for processing. The date the claim was forwarded to the team is the date to be entered into the system under the date received field.
- If the entry summary is unliquidated but scheduled for liquidation, the liquidation shall be unset and the entry summary retrieved. The date the summary is retrieved shall become the date entered in the system under the date received field. The claim and entry summary shall then be forwarded to the commodity specialist team for processing.

Liquidated

- If the entry summary is liquidated the entry summary is to be retrieved and the date the summary is retrieved shall be entered into the system under the date received field. The claim and the entry summary are to be forwarded to the commodity specialist team for processing.

The validity of the claim is the responsibility of the Import Specialist, i.e., ensuring that the timeliness of the 520(d) claim was made within one year of the date of importation.

When reviewing a post importation claim several dates become very critical: the date of entry, the signature date in block 11, and when applicable, the dates provided as in block 2 for the blanket period.

Example

The date in the signature block must precede the claim date.

Entry was made at MFN rates on February 9, 1994, and liquidated as entered June 13, 1994. A claim is filed on July 8, 1994, using a Certificate of Origin dated June 27, 1994. The claim would be a valid claim.

Example

The dates provided in block two of the Certificate of Origin must cover the entry transaction.

Entry was made on July 2, 1994, at MFN rates of duty and set to liquidate on November 6, 1994. The importer requests relief on August 29, 1994, submitting a blanket Certificate of Origin with a range of effective dates from January 1, 1994 to June 30, 1994.

This claim would be denied because the blanket Certificate of Origin submitted did not cover the time period of the shipment under consideration. If all of the facts above were the same except the dates on the blanket certificate ranged from January 1, 1994, to December 31, 1995, the claim would be approved because the shipment falls within the designated time frame.

Example

The date on a blanket Certificate of Origin may be subsequent to the effective date range provided in block 2.

Entry is filed on March 15, 1994, at the MFN rates of duty and liquidated on June 15, 1994. On July 17, 1994, a claim is made for a refund of the duties paid and a blanket Certificate of Origin is submitted. The dates furnished in block 2 are January 10, 1994, to July 8, 1994, with a signature date of July 12, 1994. The signature date does not render the Certificate of Origin invalid and the claim would be judged on its merits. The date of the entry under consideration falls within the time frame specified on the blanket.

2.2.2 Suspension of a claim

If an entry is the subject of a protest, petition or request for reliquidation relating to the good or a summons involving the good is filed in the Court of International Trade, any action on the 520(d) claim shall be suspended until the protest, petition, or request is decided or judicial action on the summons is completed.

2.2.3 Allowance of a claim

If the District Director determines that a claim for a refund is to be allowed and the entry summary is unliquidated, the District Director shall liquidate the entry with a refund.

If the District Director decides to allow the claim and the entry summary is liquidated, whether or not the liquidation has become final, the entry summary must be reliquidated to refund the duties. If the entry summary is to be reliquidated for other reasons (e.g., administrative review of a protest or petition for reliquidation or as a result of judicial review), refund on the 520(d) claim shall be made at the time of such reliquidation.

The decision to allow a claim must be entered into the ACS system in the protest module and a decision copy filed in the master file.

If any information is provided to Customs pursuant to C.F.R. 181.32(b)(4) or (5)², that information together with notice of the allowance of the claim and the amount of duty refunded shall be reported to North Star Commercial in Buffalo, NY. The dissemination of this information to the customs administration of the country from which the good was exported shall be the responsibility of North Star Commercial.

2.2.4 Denial of a claim

A claim for a refund may be denied by the District Director if the claim was not filed on time, if the importer has not complied with the requirements set forth in the filing procedures, if the Certificate of Origin submitted under C.F.R. 181.32(b)(3)³ cannot be accepted as valid under C.F.R. 181.22(c)⁴. A claim may also be denied if, after an origin verification under C.F.R. 181.72(a)⁵, the District Director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied or withheld under C.F.R. 181.72(d)⁶, 181.74(c)⁷ or 181.76(b)⁸. If a denial is based on a verification, a negative origin determination shall be issued to the appropriate parties in accordance with 19 C.F.R. 181.75.⁹

Unliquidated

- If the District Director determines that the 520(d) claim is to be denied and the entry summary is unliquidated, the District Director shall deny the claim in connection with the liquidation of the entry summary.

Liquidated

- If the District Director determines that the claim shall be denied and the entry summary is liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry summary is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the 520(d) claim. If the denial is based on a negative origin determination, the summary shall not be reliquidated until after the effective date of the origin determination as established in accordance with 19 C.F.R. 181.76¹⁰.

The decision to deny a claim must be entered into the ACS system in the protest module and a decision copy filed in the master file.

2.3 Corrected claims

If a U.S. importer who has already made a claim for preferential treatment for an originating good, has reason to believe that a Certificate of Origin on which the claim was based contains incorrect information, the importer shall make a corrected declaration within 30 calendar days and pay any duties that may be due. A corrected declaration shall be effected by submission of a letter or other written statement to the Customs office where the original declaration was filed.

Each corrected declaration or notification of an incorrect certificate shall be accompanied by a written statement that includes:

- The class or kind of good;
- Each import or export transaction affected by the incorrect declaration or certification (i.e., entry number(s) and date(s));
- The nature of the incorrect statements or omissions; and
- To the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification.

An importer who voluntarily provides a corrected declaration will not be subject to civil or administrative penalties. Voluntary is defined as:

- Done before the commencement of a formal investigation;
- Done before any of the events specified in 19 C.F.R. 162.74(g)¹¹;
- Done within 30 calendar days; and
- Accompanied by a written statement with the information enumerated above.

3. References

Customs Directive 099 3550-070, "Procedures for Filing and Processing Claims Under the North American Free Trade Agreement (NAFTA)," dated April 15, 1994.

4. Additional Information

- Article 502
- 19 C.F.R. 181, Subparts C, D, H

-
1. Section 181.22
Maintenance of records and submission of Certificate by importer
(d) Certificate Not Required
 2. Refer to items number 4 and 5 listed in the filing procedures.

3. Section 181.32 Filing Procedures
(b)(3) Importer provided copy of entry summary or equivalent documentation to any other individual
4. Section 181.22
Maintenance of records and submission of Certificate by importer
(c) Acceptance of Certificate
5. Section 181.72 Verification scope and method
(a) General
6. Section 181.72 Verification scope and method
(d) Failure to respond to letter or questionnaire
7. Section 181.74 Verification visit procedures
(c) Failure to provide written consent or to cooperate or to maintain records
8. Section 181.76 Application of origin determinations
(b) Cases involving a pattern of conduct
9. Section 181.75 Issuance of origin determination
10. Section 181.76 Application of origin determination
11. Section 162.74 Prior disclosure
(g) Penalty claims not requiring formal investigation

Chapter 6: Origin Verification and Determination

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Chapter 6: Origin Verification and Determination

1. Introduction

This chapter describes the procedures that U.S. Customs will use to initiate origin verifications and to issue origin determinations pursuant to Article 506 of the North American Free Trade Agreement (NAFTA). 19 Code of Federal Regulations (C.F.R.) 181.72, 181.75.

In general, with certain limited exceptions, 19 C.F.R. 181.71 provides that a claim for NAFTA treatment will not be denied unless U.S. Customs verifies the origin of the good and determines that it is not eligible for preferential treatment under the Agreement. Article 506 of the NAFTA requires that an origin determination be issued to the exporter or producer whose good is the subject of the verification upon its completion.

An origin determination is a written decision regarding whether a good that was the subject of a verification qualifies as an originating good as set forth in Article 401 of the Agreement (General Note 12 of the Harmonized Tariff Schedule of the United States). The scope of a determination may include the origin of the good and/or the origin of a material that is used in the production of the good. 19 C.F.R. 181.72(a)(1). Origin determinations may be either positive or negative. In connection with an origin verification, U.S. Customs may verify the rate of duty applied to an originating good (whether the "MX" or the "CA" rate applies) and may determine whether a good is a qualifying good for purposes of Annex 703.2. U.S. Customs findings as to these matters will also be reflected in the origin determination.

Every origin verification undertaken pursuant to 19 C.F.R. Part 181, Subpart G, will result in a written determination by the U.S. Customs regarding the origin of the good. 19 C.F.R. 181.75. U.S. Customs will provide a written determination of origin to the exporter or producer whose good was the subject of the verification.

U.S. Customs will generally be required to issue a written origin determination within 60 days after conclusion of every origin verification, regardless of whether the origin determination is positive or negative. 19 C.F.R. 181.75. Verifications involving novel or controversial issues will be referred to the National Import Specialist, and these determinations may take longer than 60 days. However, every effort will be made to issue determinations even in more complex cases within 90 days.

2. Procedures

2.1 Origin verifications

As a general rule, but with certain limited exceptions, 19 C.F.R. 181.71 provides that whenever a claim for preferential tariff treatment is supported by a valid and complete Certificate of Origin, U.S. Customs will allow the claim unless an origin verification is undertaken.

2.1.1 Scope

In accordance with 19 C.F.R. 181.72(a)(1) and 181.72(a)(2), an origin verification may be conducted to determine the origin of a good, including its materials and components, the applicable rate of duty applied to an originating good in accordance with Annex 302.2 of the NAFTA and whether a good is a qualifying good in accordance with Annex 703.2 of the NAFTA.

2.1.2 Requesting the Certificate of Origin

Prior to initiating an origin verification, U.S. Customs must obtain a copy of the Certificate of Origin which was used as the basis for the claim from the importer of record (importer). Photocopies are acceptable. U.S. Customs may obtain the Certificate of Origin via a Request for Information (CF 28), telephone, fax or other methods.

If a Certificate of Origin is furnished by the importer, U.S. Customs may accept the Certificate of Origin at face value and allow preferential tariff treatment or initiate an origin verification.

If a Certificate of Origin is not furnished within a reasonable time period (30 days), U.S. Customs will issue a Notice of Action (CF 29), to the importer indicating that the claim will be denied immediately. It will not be necessary in this instance for U.S. Customs to notify the exporter or producer.

If a Certificate of Origin is received from the importer but is illegible, defective, or has not been completed, signed and dated, U.S. Customs will issue a CF 29 proposing denial of the claim to the importer. It, again, is not necessary for U.S. Customs in this instance to notify the exporter or producer of the proposed action. The importer will be given a minimum of five working days to furnish a corrected Certificate of Origin before the claim is denied.

2.1.3 Initiating a verification

When U.S. Customs requests additional information, that is, any information other than that furnished on the Certificate of Origin, an origin verification has been initiated. U.S. Customs must obtain any additional information needed to establish the validity of the data contained in the Certificate of Origin from the exporter or producer.

It may also be necessary for U.S. Customs to obtain information from the Canadian or Mexican producer of a material, in the instance where the material is incorporated into the imported good, when relevant to the origin determination of that good. In this case, U.S. Customs may request this information from the producer of the material. If the producer of a material refuses to supply the requested information, the material will be treated as non-originating.

U.S. Customs may request additional information by one or more of the following methods:

- A verification letter;
- A written questionnaire;
- A visit to the premises of an exporter or a producer;
- Any other method which results in information from a Canadian or Mexican exporter or producer.

2.1.4 Response/non-response to requests for additional information

If additional information is furnished as requested, an origin determination will be issued following the notification procedures outlined in Customs Directive 099 3810-010 dated July 27, 1994.

If the initial request for additional information is not responded to within 30 days or if the information submitted is incomplete, a follow up request will be issued on a CF 29 to which will be attached a copy of the original request for information (that is, the verification letter, the written questionnaire, or any other method which was used to obtain the information). U.S. Customs will send this directly to the exporter or producer of the good. A follow up request will contain the following elements:

- A statement that additional information needed to verify the Certificate of Origin was originally requested on the attached copy of the request for information;
- A statement that unless the additional information is submitted within 30 days, the claim will be denied without further notification;

- A written origin determination in accordance with the procedures outlined in Customs Directive 099 3810-010 dated July 27, 1994.

U.S. Customs will also issue a CF 29 to the importer advising that the claim will be denied in 30 days because the requested additional information needed to verify the Certificate of Origin has not been furnished.

The importer may be requested to obtain this additional information from the exporter or producer. A failure or refusal on the part of the importer to obtain and provide such information will not be considered a failure of the exporter or producer to provide the information and will not constitute grounds for denying preferential tariff treatment on the good.

NOTE: If the importer fails or refuses to obtain and provide the additional information, the exporter or producer will be given 30 days to respond to an original request for information.

Information obtained orally may be used to make a positive origin determination but may not be used as a basis to deny a claim. In order to deny a claim, information must be in writing and must be identifiable as coming from the exporter or producer. All responses to U.S. Customs will be in English.

2.2 Origin determinations

2.2.1 Issuance to exporter

U.S. Customs will issue an origin determination to an exporter upon completion of a NAFTA verification.

Positive determinations

Positive determinations will be issued via a CF 29. The action will be noted as "TAKEN" and the following information will be included in Block 13 of the form:

- A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;
- A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based;
- Specific reference to the rules applicable to originating goods as set forth in General Note 12, HTSUS, and the NAFTA Rules of Origin Regulations, the legal basis for the determination.

Negative determinations

Negative origin determinations will also be prepared on a CF 29. Negative origin determinations issued to exporters in Mexico will be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter; those sent to Canada will be sent via regular mail. The action will be noted as "PROPOSED" but the sentence that begins "If you disagree with this proposed action . . ." will be struck out. Instead, the information required for positive determinations as mentioned above will be included in block 13 of the form, as well as the following additional information:

- A notice of intent to deny preferential tariff treatment on the good which was the subject of the determination;
- The specific date after which preferential tariff treatment will be denied. 19 C.F.R. 181.76(a)(1). In the case of negative origin determinations issued to exporters in Canada, this will be the date 30 days from the date of issuance of the CF 29. Exporters in Mexico will be advised that this date will be the date 30 days from the date on which the exporter receives the written determination from U.S. Customs, as confirmed by the certified or registered mail receipt;
- The period during which the exporter of the good may provide written comments or additional information regarding the determination, that is, the 30 day period as noted above. 19 C.F.R. 181.76(a)(2);
- If the origin determination is the second one performed to verify the origin of the same goods, this additional statement:

This is the second time the U.S. Customs Service has verified the origin of these goods and found that they do not meet the NAFTA rules of origin. Preferential tariff treatment pursuant to the NAFTA will be denied on all future shipments of identical goods imported into the United States until you establish compliance with the NAFTA rules of origin, as described in General Note 12 to the Harmonized Tariff Schedule of the United States.

- This statement regarding the exporter's review and appeal rights:

As exporter, you have the right to appeal this determination of origin pursuant to 19 U.S.C. 1514 and Part 174 of the Customs Regulations (19 C.F.R. Part 174) within 90 days after the liquidation of the entry(s) listed in this notice. A Bulletin Notice of Liquidation will be posted at

the Customs District office where the good(s) was entered on the date the entry(s) is liquidated. Appeal rights will be allowed for 90 days after the date of posting of the Bulletin Notice of Liquidation; appeals filed prior to liquidation will be denied as untimely.

- This statement regarding the exporter's obligation to notify other parties to whom he/she may have given an inaccurate Certificate of Origin:

Pursuant to Article 504 of the North American Free Trade Agreement, you have an obligation to notify in writing all persons to whom you have given a Certificate of Origin if you have reason to believe there has been any change that could affect the accuracy or validity of that Certificate. Thus, if you have provided to other persons a Certificate of Origin covering goods that are identical to the goods that were the subject of this determination, you should notify them of this determination.

2.2.2 Issuance to producer

If an exporter completes a Certificate of Origin based on a Certificate of Origin prepared by the producer of the good (see Customs Form 434, Field 8, #3), U.S. Customs will also issue a copy of the origin determination to the producer of the good. U.S. Customs will not use extraordinary means to locate a producer whose identity or address is unknown.

2.2.3 Issuance to importer

For negative determinations, U.S. Customs will also inform the U.S. importer of its decision via a proposed action on a CF 29. This CF 29 will list all entry summaries covered by the verification and state the reason for the denial of the claim.

2.2.4 Additional information submitted in relation to proposed denials

In accordance with 19 C.F.R. 181.76(a)(2), additional information provided by the exporter or producer that relates to a proposed denial will be considered if it is provided to U.S. Customs before the denial date of the determination, as determined in accordance with 19 C.F.R. 181.76(a)(1). If this additional information changes the original determination, the aforementioned notification procedure will be repeated.

2.2.5 Effective dates of origin determinations

While positive origin determinations are effective on the date of their issuance, the effective date for negative determinations will be determined in accordance with 19 C.F.R. 181.76(a) (the date of issuance of the CF 29 for exporters and producers in Canada and the date on which receipt of the written determination by the exporter or producer is confirmed for exporters and producers in Mexico).

When a negative determination is the result of a tariff classification or value applied by U.S. Customs to one or more of the materials used in the production of the good, which differs from the tariff classification or value applied to such materials by the NAFTA country from whose territory the good was exported, the determination will not become effective until the U.S. Customs notifies in writing both the importer and the person who completed and signed the Certificate of Origin. 19 C.F.R. 181.76(c).

2.2.6 Negative determinations resulting from differing tariff classifications or values

A negative determination resulting from differing tariff classifications or values will not apply to importations made before the effective dates of the negative determination if, prior to notification of the determination, the customs administration of the country from which the good was exported either issued an advance ruling under Article 509 of the Agreement or any other binding ruling on the tariff classification or value of such materials, or gave consistent treatment to the entry of the materials under the tariff classification or value at issue. 19 C.F.R. 181.76(d). (See 19 C.F.R. 181.76(d) for definitions of "ruling" and "consistent treatment.") The exporter, producer or importer must bring the existence of such a ruling or consistent treatment to the attention of the U.S. Customs Service within 30 days of receipt of the negative determination.

The effective date of negative determinations resulting from differing tariff classifications or values will be delayed for a period not exceeding 90 days if either the U.S. importer or the person who completed and signed the Certificate of Origin demonstrates to U.S. Customs satisfaction that it relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration from whose territory the good was exported. 19 C.F.R. 181.76(e).

The period of any extension granted will only extend to such period during which the importer or the person who prepared the Certificate of Origin actually relied to his/her detriment on the tariff classification or value applied to such materials by the customs administration from whose territory the good was exported. Thus, for example, if an importer can demonstrate that there were three

shipments already in route to the United States when he/she received the negative origin determination, and those three shipments arrived within the 45 days after the effective date of the negative origin determination, U.S. Customs would be justified in granting an extension of 45 days. Likewise, the existence of outstanding contracts for the goods, which cannot be modified, may be reason to grant an extension.

3. References

Customs Directive 099 3810-011, "Origin Verifications Under the North American Free Trade Agreement (NAFTA)," dated August 31, 1994.

4. Additional information

- Articles 505 and 506
- 19 C.F.R. 181, Subparts C, G

Chapter 7: Review and Appeal

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Chapter 7: Review and Appeal

1. Introduction

The North American Free Trade Agreement (NAFTA) intends for each Party to provide substantially the same rights of review and appeal concerning NAFTA determinations as it provides to importers in its territory. Review and appeal rights are provided for under Articles 510, 1804, and 1805 of the NAFTA. U.S. Customs has included in its interim regulations guidance on how to proceed through the review and appeals process under Title 19, Code of Federal Regulations, Part 174 and Subparts G, I, and J, of Part 181.

Importers of record in the United States, exporters and producers in Canada and Mexico, or their authorized agent(s), may request and U.S. Customs shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings as it provides to importers in the United States. This right is available to any person:

- who completes and signs a NAFTA Certificate of Origin for a good that has been the subject of a determination of origin;
- whose good has been the subject of a country of origin marking determination pursuant to Article 311 (Country of Origin Marking) under NAFTA; or
- who has received an advance ruling pursuant to Article 509(1) under NAFTA.

2. Procedures

Importers in the United States, and exporters and producers in Canada and Mexico who have completed a Certificate of Origin, may obtain administrative review of NAFTA origin determinations by filing protests under 19 U.S.C. 1514. These protests shall be filed in accordance with 19 C.F.R. 174.12, within 90 calendar days after, not before, the date of liquidation of the entry. It is the responsibility of exporters and producers in Canada and Mexico to ascertain the date of liquidation from the U.S. importer, the importer's customs broker or by checking the bulletin notice of liquidation.

Protests shall be prepared in English on Customs Form 19 or a letter clearly labeled "Protest" and setting forth the same information as required on the Form. Protests shall be filed with the District Director of U.S. Customs for the port of entry where the goods were entered. A protesting party may file one protest for multiple entries filed in the same district if all the entries involve the same merchandise and the protest involves a decision common to all the entries.

Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the Court of International Trade within 180 days after the date of mailing of the notice of denial.

Review and appeal of adverse marking decisions are provided for in 19 U.S.C. 1514, and 19 C.F.R. part 174 and 181.111 through 181.116. Notification of an adverse marking decision is generally given to an importer in the form of a Customs Form 4647 (Notice to Mark and/or Notice to Redeliver) and/or by assessing marking duties on improperly marked merchandise. The exporter or producer of the merchandise which is the subject of an adverse marking decision may request a statement concerning the basis for the decision by filing a typewritten request, in English, with the District Director who issued the decision. The request should be on letterhead paper in the form of a letter and be clearly designated as a "Request for Basis of Adverse Marking Decision". The following information is required:

- The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;
- A statement that the inquirer is the exporter or producer of the merchandise that was the subject of the adverse marking decision;
- Exporter/producer/authorized agent identification number;
- The number and date of each entry involved in the request;
- A specific description of the merchandise which is the subject of the adverse marking decision; and
- A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision.

The District Director will issue a written response to the requestor within 30 days of receipt of a request. The response shall include the following:

- A statement concerning the basis for the adverse marking decision;
- A copy of the relevant Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), if one was issued to the importer and is available. If the basis for the adverse marking decision is indicated on the Customs Form 4647, no statement under paragraph (1) above is required;
- A statement as to whether the importer has filed a protest regarding the adverse marking decision and, if so, where the protest was filed and the protest number; and
- A statement concerning the exporter's or producer's right to either intervene in the importer's protest as provided in Title 19, Section 181.115, C.F.R. or file a petition as provided in Title 19, Section 181.116, C.F.R.

An exporter or producer of merchandise does not have an independent right to protest an adverse marking decision. However, they may have the ability to intervene on behalf of the importer. Title 19, Section 181.115, C.F.R., provides the form and filing instructions for intervening. Exporters and producers may file a petition for reconsideration of an adverse marking decision after the importer's time to protest the adverse marking decision has expired.

Where any marking issue is pending before the United States Court of International Trade, The United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom, no decision on a petition will be issued. Litigation before any other court will not preclude the issuance of a decision on a petition. Any person whose petition has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade within 30 days after the date of mailing of the notice of denial.

3. References

Customs Directive 099 3810-009, "Administrative and Judicial Review of Origin Determinations Under the North American Free Trade Agreement (NAFTA)," dated July 12, 1994.

Customs Directive 099 3810-010, "Issuance of Origin Determinations Under the North American Free Trade Agreement (NAFTA)," dated July 27, 1994.

4. Additional information

- Articles 510, 1804, and 1805
- 19 C.F.R. 174
- 19 C.F.R. 181, Subparts G, I, J

Chapter 8: Drawback and Duty Deferral

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Chapter 8: Drawback and Duty Deferral

1. Introduction

1.1 Drawback

The term "drawback" refers to a refund of 99 percent of the duties or taxes which are collected on imported merchandise because certain legal or regulatory requirements have been met. To qualify for drawback, an importation of merchandise and subsequent exportation or destruction of merchandise must occur. The purpose of the Drawback Program is to assist American importers, manufacturers and exporters to compete in international markets by allowing them to obtain refunds of duties paid on imported merchandise.

There are three primary types of drawback including Manufacturing Drawback, Same Condition Drawback and Rejected Merchandise Drawback.

- **Manufacturing Drawback (19 U.S.C. 1313(a) and 1313(b))** is a refund of duties paid on imported merchandise that is used in the manufacture of articles that are either exported or destroyed.
- **Same Condition Drawback (19 U.S.C. 1313(j)(1) and 1313(j)(2))** is a refund of duties paid on imported merchandise that is exported or destroyed in the same condition as when imported, and was never used in the United States.
- **Rejected Merchandise Drawback (19 U.S.C. 1313(c))** is a refund of duties paid on imported merchandise that is exported because it did not conform to sample or specifications, or was shipped without the consent of the consignee.

For non-NAFTA merchandise, Same Condition Drawback has been replaced by Unused Merchandise Drawback. This new type of drawback is similar to Same Condition Drawback except the merchandise need not be in the same condition when exported or destroyed as when imported. Instead, it is only required that it be unused in the United States.

1.1.1 Drawback under NAFTA

Direct Identification Same Condition Drawback - 19 U.S.C. 1313(j)(1) and Rejected Merchandise Drawback - 19 U.S.C. 1313(c)

Under the Agreement, goods exported to Canada or Mexico that qualify for either 19 U.S.C. 1313(j)(1) or 1313(c) will be eligible for full drawback benefits.

Substitution Same Condition Drawback - 19 U.S.C. 1313(j)(2)

Under the Agreement, drawback will no longer be paid on claims filed under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

Manufacturing Drawback (Direct Identification and Substitution) - 19 U.S.C. 1313(a)&(b)

For goods exported to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001, drawback may be paid up to the lesser amount of duties paid on the goods either when they enter the United States, or when it enters Canada or Mexico.

Example

Upon importation of Product X into the United States from Germany, Company A pays \$10.00 in duties. Company A manufactures Product X into Product Y, and subsequently exports it to Canada. Canada assesses \$6.00 in duty on Product Y. Upon presenting a drawback claim in the United States, Company A would be entitled to a refund of 99 percent of \$6.00. This is because the \$6.00 dollars paid to Canada on Product Y is a lesser amount of duties than the total amount of duties paid to the United States (\$10.00) on Product X.II.

1.2 Duty deferral programs

Foreign trade zones

Foreign trade zones (FTZ's) are secured areas legally outside a nation's customs territory. Foreign and domestic merchandise that is permitted in an FTZ may be either stored or manufactured, or undergo a number of other processes such as

assembly, repacking, sorting, and cleaning without being subject to U.S. duty or excise tax. FTZ's are intended to attract and promote international trade and commerce.

Bonded warehouses

A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated, or may undergo manufacturing operations without payment of duty.

Temporary importation under bond

Temporary importation under bond (TIB) is a procedure involving the entry of merchandise into the Customs territory temporarily free of duty by posting a bond. In the bond, the importer agrees to export or destroy the merchandise within a specified time.

1.2.1 Duty deferral programs under NAFTA

For goods exported to Canada on or after January 1, 1996 or to Mexico on or after January 1, 2001, the following policies will apply:

Foreign trade zones

Goods that are manufactured or changed in foreign trade zones (FTZ's) and then exported to Canada or Mexico, the duty assessed must be paid no later than 60 days after the date of exportation. If the goods are nonprivileged status, duty is assessed on the good in its condition, quantity, and weight at its time of exportation from the FTZ to Canada or Mexico. If the goods are privileged status, duty is assessed on the good in its condition, quantity and weight at the time of admission to the FTZ. However, upon presentation of proof of exportation and satisfactory evidence of the amount of duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in the amount that does not exceed the lesser of either the total amount of duties payable to the United States, or the total amount of duties paid to Canada or Mexico.

Example

Company A imports auto parts from Japan and admits them into an FTZ claiming nonprivileged foreign status. Company A manufactures subcompact automobiles using the imported parts, which if regularly entered in the U.S. they would have been dutiable at \$50,000. Company A withdraws the automobiles from the FTZ and sells them to Company B. Company B exports the automobiles to Mexico and pays \$40,000 in duties. Before the expiration of the 60 days from exportation, Company A submits documentation showing exportation and payment of duties in Mexico, and pays \$10,000 in duty to the U.S. This amount represents the difference between the \$50,000 which would have been paid if the automobiles had been entered for consumption, and the \$40,000 paid to Mexico.

Bonded warehouses

When a good is either manufactured or manipulated in a bonded warehouse and then withdrawn for exportation to Canada or Mexico, duty will be assessed on that good in its condition and quantity at the time of withdrawal. The duty will be paid no later than 60 days after the date of exportation. However, upon the presentation of proof of exportation and satisfactory evidence of the amount of duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duties payable to the United States, or the total amount of duties paid to Canada or Mexico.

Example

Company A imports chemicals into the United States, makes a warehouse entry, and manufactures pharmaceuticals. These pharmaceuticals are withdrawn from the warehouse for immediate exportation to Canada. U.S. duty is assessed on the pharmaceuticals in the amount of \$1,000. Company A, however, does not pay the duties at this time. Canada assesses the equivalent of US\$900 on the exported pharmaceuticals. Company A submits to U.S. Customs, within 60 days of exportation, proof of exportation and evidence of payment of duties to Canada. Company A will only be required to pay \$100 in U.S. duties because the \$1,000 owed to the U.S. was reduced by \$900, which was the lesser of the two duties.

Temporary Importation Under Bond

Where a good, regardless of its origin, was imported temporarily free of duty under a Temporary Importation Under Bond (TIB) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of importation into the U.S.. Such duty will be paid no later than 60 days after the date of exportation. However, upon the presentation of proof of exportation and satisfactory evidence of the amount of duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in the amount that does not exceed the lesser of either the total amount of duties payable to the United States, or the total amount of duties paid to Canada or Mexico.

Example

Company A imports glassware from France under a TIB. This glassware would have been dutiable at \$6,000 had it been entered under a consumption entry. Company A alters the glassware by etching hotel logos on the glassware, and then exports the glassware to Mexico where \$6,200 in duties is assessed. Company A submits to Customs proof of exportation and evidence of payment of duties to Mexico which it obtained from Company B. Company A will not be required to pay any of the \$6,000 in U.S. duties because this amount is reduced by the lesser amount of the two duties assessed which in this case is \$6,000.

2. Procedures

2.1 Drawback

In order to administer the drawback provisions of NAFTA, claimants are required to submit some additional documentation to Customs. New documentation required includes the following:

- Proof of the amount of duties paid on importation such as a copy of the Canadian or Mexican entry document showing amount of duties paid, and/or a certification from the Canadian or Mexican importer as to the amount of duties paid.
- An affidavit of the claimant stating that: no other drawback claim has been made on the designated goods; that the claimant has not provided a Certificate of Origin for the exported goods to another party; and that the claimant will notify Customs if they subsequently provide a Certificate of Origin to any person.

2.2 Duty deferral programs

In order to administer the drawback provisions of NAFTA, claimants must submit additional documentation with their claims to Customs. The person who exports goods must show evidence of duties paid or owed to Canada or Mexico.

3. References

Customs Directive 0993740-008, "Procedures for Obtaining a Fungibility Drawback," dated April 1, 1993.

Customs Directive 0993740-007, "Exporter's Summary Procedures for Manufacturing and Same Condition Drawback," dated April 21, 1992.

Customs Directive 0993740-005, "Request for Records of Importation - Drawback," dated December 13, 1983.

Customs Directive 0993740-004, "Accelerated Payment Authorizations for Manufacturing and Same Condition Drawback," dated February 19, 1991.

Customs Directive 0993740-003, "Customs Form 331, Manufacturing Drawback Entry and/or Certificate," dated January 14, 86.

Customs Directive 0993740-002, "Revised Customs Form 7539, For "C" and "J" Drawback Claims," dated June 28, 1984.

Customs Directive 0993740-001, "Audit Verification and Liquidation of Drawback Claims and Recovery of Overpayments," dated May 30, 1984.

4. Additional information

- Article 303
- 19 C.F.R. 181, Subpart E

Chapter 9: Temporary Admission

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Chapter 9: Temporary Admission

1. Introduction

Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS) provides for the duty free entry of articles brought into the United States temporarily and not imported for sale or for sale on approval. These goods may be admitted into the U.S. without the payment of duty, under bond, but must be exported within one year from the date of importation. This time period may be extended not to exceed three years.

2. Procedures

Under NAFTA, certain classes of goods originating in Canada or Mexico may be entered without the posting of a bond or other security.

2.1 Classes of goods

NAFTA Article 305 grants duty-free temporary admission to four classes of goods, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the United States. These goods must be imported into the U.S. from Canada or Mexico.

- Professional equipment necessary to carry out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter Sixteen (Temporary Entry for Business Persons) (**HTS 9813.0050**)
- Equipment for the press or for sound or television broadcasting and cinematographic equipment (**HTS 9813.0050**)
- Goods imported for sports purposes and goods intended for display or demonstration (**HTS _____**).
- Commercial samples and advertising films (**HTS 9813.00.20 and 9813.00.25**)

2.2 Conditions for temporary admissions

Professional equipment, equipment for the press, sports articles and articles intended for display or demonstration (classes 1 - 3) must:

- be imported by a national or resident of Canada or Mexico;
- be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;

- not be sold or leased while in its territory;
- be accompanied by a bond, if required;
- be capable of identification when exported;
- be exported on the departure of that person or within such other period of time as is reasonable related to the purpose of the temporary admission; and
- be imported in no greater quantity than is reasonable for its intended use.

Commercial samples and advertising films (class 4) must:

- be imported solely for the solicitation of orders for foreign goods;
- not be sold or leased or put to any use other than exhibition or demonstration while in its territory;
- be capable of identification when exported;
- be exported within such period as is reasonably related to the purpose of the temporary admission; and
- be imported in no greater quantity than is reasonable for its intended use.

(Note: See Chapter 11 - commercial samples of negligible value)

2.3 Bonding Requirements

For classes of goods 1 - 3: professional equipment, equipment for the press, sports articles and articles intended for display or demonstration if brought into the U.S. by a resident of Canada or Mexico and entered under Chapter 98 (HTSUS), Subchapter XIII, no bond or other security shall be required if the entered article is a good originating in Canada or Mexico within the meaning of General Note 12, HTSUS.

Non-originating goods require a bond in an amount no greater than 110 percent of the charges that would be owed if the goods were entered for consumption, or another form of security.

2.4 ATA carnet

The United States allows ATA carnets to be used for the temporary admission of professional equipment, commercial samples, and advertising material. A carnet may be filed in lieu of a bond on Customs Form 301. When articles are entered under an ATA carnet, the importation voucher of the carnet shall serve as the entry.

2.5 Documentation

2.5.1 Importation

Entry of articles under Chapter 98, Subchapter XVIII of the HTSUS shall be made on Customs Form (CF) 3461 or CF 7533. An entry summary, CF 7501, shall be filed within 10 days after time of entry. If a CF 7501 is filed at time of entry, this shall serve as both the entry and entry summary, and a CF 3461 or 7533 shall not be required.

In addition to the data usually shown on a regular consumption entry summary each temporary importation bond entry summary shall include:

- HTSUS subheading number under which entry is claimed;
- statement of use to be made of the articles in sufficient detail to enable the District Director to determine whether they are entitled to entry as claimed;
- declaration that the articles are not be put to any other use and that they are not imported for sale or sale on approval.

The invoice should include:

- description of each article in detail;
- value of each article;
- any marks, numbers, or other distinguishing features of the product.

2.5.2 Exportation

Articles entered under a temporary admission may be exported at the U.S. port of entry or at another port, within the designated time frame. An application on CF 3495 shall be filed in duplicate with the District Director of Customs in advance of exportation to allow for the examination of the goods if the circumstances warrant.

If a carnet was used for entry purposes, the reexportation voucher of the carnet shall be filed, in addition to the CF3495, and the carnet shall be presented for certification.

2.6 Customs duties

Customs duties and any other charges that would be owed on entry or final importation shall be assessed on a good if the conditions and requirements for temporary duty-free admissions are not fulfilled.

2.7 Relief from liability

Relief from liability under bond may be obtained in any case in which the articles are destroyed under Customs supervision, in lieu of exportation, within the original bond period.

3. References

December 30, 1993 Federal Register.

Harmonized Tariff Schedule of the United States, Subchapter XIII, U.S. Notes.

IMPORTING INTO THE UNITED STATES, Customs Publication 504, dated March 1993.

4. Additional information

- Article 305
- 19 C.F.R. 10.31, 114.22

Chapter 10: Repairs and Alterations

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Chapter 10: Repairs and Alterations

1. Introduction

This chapter outlines the procedures and documentation necessary to enter a good into the United States from either Canada or Mexico, after the good was originally exported from the U.S. and then repaired or altered in either Canada or Mexico. This chapter also includes a special provision for vessels undergoing repairs or alterations in Canada or Mexico.

According to Article 307 of the North American Free Trade Agreement, as set out in Annex 307.1, no NAFTA country may assess a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported from its territory to the territory of another NAFTA country for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Procedures

2.1 Definition of repairs or alterations

A repair or alteration is defined as a restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. Refer to the following example of an operation that is **more** than a repair or alteration:

Example

Glass mugs produced in the U.S. are exported to Canada for etching and tempering operations, after which they are returned to the U.S. for sale. The foreign operations exceed the scope of an alteration because they are manufacturing processes which create commercially different products with distinct new characteristics.

Furthermore, a good that is exported from the U.S. that is incomplete for its intended use and sent to Canada or Mexico to undergo a processing operation that constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods is not considered to have been repaired or altered. Refer to the following example to better understand this concept.

Example

Unflanged metal wheel rims are exported to Canada for a flanging operation to strengthen them so as to conform to U.S. Army specifications for wheel rims; although the goods when exported from the U.S. are dedicated for use in the making of wheel rims, they cannot be used for that purpose until flanged. The flanging operation does not constitute a repair or alteration because that operation is necessary for the completion of the wheel rims.

2.2 Tariff schedule items

An entry for consumption into the U.S. for merchandise returned to the U.S. after having been exported for repairs or alterations must be made utilizing one of the two following U.S. Harmonized Tariff Schedule (HTSUS) Chapter 98 items depending upon circumstances:

- 9802.00.40 Repairs or alterations made pursuant to a warranty
- 9802.00.50 Other (provides for repairs or alterations made for any other reason, other than pursuant to a warranty)

In addition to reporting the Chapter 98 tariff item, on the U.S. Customs entry documentation (Customs Form 3461 and Customs Form 7501), the importer must also report the applicable tariff classification for the good itself, using Chapters 1-97 of the U.S. Harmonized Tariff Schedule (HTSUS). This alternate tariff classification will determine the proper duty rate for the imported merchandise which will be assessed on the cost of the repair or alteration.

2.3 Value

In addition to the tariff numbers, the importer must report on the same Customs forms, the value of repairs, alterations, processing or other change in condition made outside the U.S. which reflects the **full cost** to the importer of such change; or if no change is made, the **full value** of such change, as set out in the invoice and other entry papers. If the U.S. Customs officer concludes that the amount so set out does not represent a reasonable

cost or value, then the value of the change shall be determined in accordance with section 402 of the Tariff Act of 1930. The duty, if any, to be paid by the importer will then be calculated by applying the duty rate as determined in the previous paragraph, against this reported value of the repair or alteration.

The cost or value of the repairs or alterations performed outside the U.S., which is to be shown on the invoice and entry papers, is limited to the cost or value of repairs or alterations actually performed abroad. This reported value should include all domestic and foreign articles furnished for the repairs or alterations but is not to include any of the expenses incurred in the U.S. whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, otherwise.

If the good, as returned to the U.S., is subject to a specific or compound rate of duty, such rate shall be converted to the ad valorem rate, which when applied to the full value of the good determined, in accordance to section 402 of the Tariff Act of 1930, would equal the same amount of duties as the specific or compound rate. In order to calculate the duties due, the ad valorem rate so obtained shall be applied to the value of the change in condition made outside the U.S.

2.4 Declaration

At the time of entry, the following declarations must to be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under HTSUS 9802.0040 or 9802.0050.

A declaration from the person who performed such repairs or alterations, in substantially the form:

I, _____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me(us) on _____, 19__, from _____ (name and address of owner or exporter in the United States); that they were received by me(us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me(us); that the full cost or (when no charge is made) value of such repairs or alterations are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me(us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations see Subchapter II, Chapter 98, HTSUS)	Total value of articles after repairs or alterations
-------------------	---	---	--

(Date)

(Signature)

(Address)

(Capacity)

A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above)(attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the articles were not manufactured or produced in the U.S. under subheading 9813.00.05¹, HTSUS; that such articles were exported from the U.S. for repairs or alterations and without benefit of drawback from _____(port) on _____, 19__; and that the articles entered in their repaired or altered condition are the same articles that were exported on the above date and that are identified in the (above)(attached) declaration.

(Date)

(Signature)

(Address)

(Capacity)

2.5 Additional information

The U.S. Customs District Director at the U.S. port of entry of the imported goods may ask for additional information such as actual proof of exportation of the goods from the U.S. Examples of this type of proof would be: a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading or an airway bill. If however, the District Director is satisfied that the goods meet all the conditions of this type of entry, for reasons such as the nature of the article or production of other evidence, then he/she may waive the submission of the declarations noted above.

2.6 Importation of goods and vessels repaired or altered in Canada

2.6.1 Goods

Repairs or alterations performed under warranty

When a good is exported from the U.S. to Canada for a repair or alteration under warranty and then subsequently imported back into the U.S., according to Annex 307.1 of NAFTA, the importer will enter the good into the U.S., free of duty **regardless of the origin of the good**. A NAFTA Certificate of Origin will not be required with the entry documentation. The value of the repair or warranty, however, must still be reported.

Repairs or alterations NOT performed under warranty

When a good is exported from the U.S. to Canada for a repair or alteration that is **not** performed under warranty and subsequently imported back into the U.S., according to Annex 307.1 of NAFTA, the importer must enter the good into the U.S. applying the pertinent NAFTA rate of duty for Canada, based on the full cost or value of the repair or alteration.

2.6.2 Vessels

With regard to vessels repaired or altered in Canada, the importer must enter the vessel into the U.S., applying the pertinent NAFTA rate of duty for Canada, based, also, on the full cost or value of the repair or alteration. **Section D-List of Goods in Annex 307.1** of NAFTA defines which vessels are covered by **Article 307**. This definition and list are as follows:

Definition

Any vessel, including the goods, documented by a NAFTA country under its law to engage in foreign or coastwise trade, or a vessel intended to be employed in such trade:

- cruise ships, excursion boats, ferry boats, cargo ships, barges and similar vessels for the transport of persons or goods, including:
 - tankers,
 - refrigerated vessels, other than tankers,
 - other vessels for the transport of goods and other vessels for the transport of both persons and goods, including open vessels;
- fishing vessels, including factory ships and other vessels for processing or preserving fishery products of a registered length not exceeding 30.5m;
- light vessels, fire floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function, floating docks, floating or submersible drilling or production platforms; and drilling ships, drilling barges and floating drilling rigs;
- tugboats.

Deposit of Duties

The District Director shall require at the time of entry, a deposit of the estimated duties based upon the full cost or value of the repairs or alterations for goods returned from Canada after having been repaired or altered other than pursuant to a warranty.

2.7 Importation of goods and vessels repaired or altered in Mexico

2.7.1 Goods

When a good is exported from the U.S. to Mexico for a repair or alteration and then subsequently imported back into the U.S., the importer will enter the good into the U.S., applying a free rate of duty, **regardless of the origin of the good**. No distinction is made for duty purposes on whether the repair or alteration was performed under warranty or not. A NAFTA Certificate of Origin will not be required with the entry documentation.

2.7.2 Vessels

When a vessel, as defined in **Section D-List of Goods** in **Annex 307.1**, is exported to Mexico for repair or alteration and then returned back to the U.S., the importer will enter the vessel, regardless of its origin, applying a rate of duty of 50 percent which is to be reduced in five equal annual stages beginning on January 1, 1994.

Any vessel, including the goods, documented by a NAFTA country under its law to engage in foreign or coastwise trade, or a vessel intended to be employed in such trade:

- cruise ships, excursion boats, ferry boats, cargo ships, barges and similar vessels for the transport of persons or goods, including:
 - tankers,
 - refrigerated vessels, other than tankers,
 - other vessels for the transport of goods and other vessels for the transport of both persons and goods, including open vessels;
- fishing vessels, including factory ships and other vessels for processing or preserving fishery products of a registered length not exceeding 30.5m;
- light vessels, fire floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function, floating docks, floating or submersible drilling or production platforms; and drilling ships, drilling barges and floating drilling rigs;
- tugboats.

2.8 Importation of goods from Canada or Mexico for repair in the U.S.

When a good is exported from either Canada or Mexico for importation into the U.S. for repair or alteration, the importer will be required to file a temporary importation entry, utilizing HTSUS tariff item 9813.00.0540. The procedures and documentation required to file a temporary importation entry are addressed in **Chapter 8 of this manual, under "Drawback and Duty Deferral"**. A temporary importation entry is one of the duty deferral programs in existence. The importer will apply a free rate of duty on the good exported from Canada or Mexico, regardless of its origin. A NAFTA Certificate of Origin is not required.

3. References

Public Law 103-182, December 8, 1993.

Harmonized Tariff Schedule of the United States 1994, Chapter 98, Subchapter II.

Treasury Decision 94-47, May 25, 1994.

Tariff Act of 1930, as amended, Section 402.

4. Additional information

- Article 307
- 19 C.F.R. 181.64
- 19 C.F.R. 10.8

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1. 9813.00.05 HTSUS provides for articles to be repaired, altered or processed in the United States (including processes which result in articles manufactured or produced in the United States).

Chapter 11: Miscellaneous

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Chapter 11: Miscellaneous

1. Introduction

The purpose of this chapter is to provide information on the specific aspects of NAFTA that have a bearing on the decision of origin determination. It will deal with the application of the rule of de minimis as it pertains to NAFTA origin determinations: tracing lists for automotive origin determination; confidentiality; commercial samples; record keeping; and printed advertising material.

2. Procedures

2.1 De minimis (Article 405)

2.1.1 Non-originating materials that do not undergo a required tariff change

A good shall be considered to originate in the territory of a NAFTA country where the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries is not more than seven (7%) percent of:

- the transaction value of the good adjusted to the F.O.B. basis, or
- the total cost of the good, where there is no transaction value or the transaction value of the good is unacceptable, provided that:
 - if, under the rule in which the applicable change in tariff classification is specified, the good is also subject to regional value content requirement, the value of those non-originating materials shall be taken into account in calculating the regional value content of the good in accordance with the method set out for that good, and,
 - the good satisfies all other applicable requirements.

Exception: a good provided for in heading 2402, the percentage shall be nine (9%) percent instead of seven (7%) percent.

2.1.2 Rule for regional value content requirement

A good that is subject to a regional value content requirement shall be considered to originate in the territory of a NAFTA country and shall not be required to satisfy that requirement where:

- the value of all non-originating materials used in the production of the good is not more than seven (7%) percent of:
 - the transaction value of the good, adjusted to the F.O.B. basis, or
 - the total cost of the good, where there is no transaction value for the good; and
- the good satisfies all other applicable requirements.

2.1.3 Rule of textile articles

A good provided for in Chapters 50 to 63 that does not originate in the territory of a NAFTA country because certain fibers or yarns that are used in the production of the component of the good that determines that the tariff classification of the good does not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries, shall be considered to originate in the territory of a NAFTA country if:

- the total weight of all those fibers or yarns not more than seven (7%) percent of the total weight of that component, and
- the good satisfies all other applicable requirements.

The component of the good that determines the classification of that good shall be identified with Rule 3(b), Rule 3(c), and Rule 4 of the General Rules for Interpretation of the Harmonized System. Where the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component shall be taken into account in determining the weight of the fibers and yarns in that component.

2.2 Confidentiality (Article 507)

2.2.1 Maintenance of confidentiality

The Customs officer who has possession of the confidential business information collected pursuant to Chapter Five, Article 507, of the NAFTA agreement, and 19 C.F.R. 103.12(d) shall maintain its confidentiality and protect it from any disclosure that could prejudice the competitive position of the persons providing the information. 19 C.F.R. 181.121.

2.2.2 Disclosure to government authorities

Confidential business information collected pursuant to Chapter Five, Article 507 of the NAFTA agreement, may be disclosed to governmental authorities in the United States responsible for the administration and enforcement of determinations of origin and of customs and revenue matters. This disclosure is pursuant to the Trade Secrets Act, 18 U.S.C. 1905, and the Paperwork Reduction Act 44 U.S.C. 3501-3520. 19 C.F.R. 103.12(d), 181.122.

2.3 Record keeping (Article 505)

2.3.1 Export

An exporter or producer in the United States who completes and signs a Certificate of Origin shall maintain in the United States, for five years after the date which the Certificate was signed, all records relating to the origin of a good for which preferential tariff treatment may be claimed in Canada and Mexico including the records associated with:

- the purchase of, cost of, value of, and payment for, the good that is exported from the United States;
- the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from the United States; and
- the production of the good in the form in which the good is exported from the United States.

Such records shall be maintained in accordance with the Generally Accepted Accounting Principles applied in the United States and may be maintained in hard copy form, on microfilm or microfiche or in automated record storage devices if associated computer programs are available to facilitate retrieval of the data in a usable form. 19 C.F.R. 181.12.

2.3.2 Imports

Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in the United States, for five years after the date of importation of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and other relevant documents such as statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices, computer programs necessary to retrieve the information in an usable form. 19 C.F.R. 181.22.

2.3.3 Drawback

All records required to be kept by the exporter, importer, manufacturer or producer under 19 C.F.R. 181 with respect to manufacturing drawback claims, and all records kept by others which compliment the records of the importer, exporter, manufacturer or producer shall be retained for at least three years after payment of such claims. 19 C.F.R. 181.49.

2.4 Samples (Article 306)

Commercial samples of negligible value imported from Canada or Mexico may qualify for duty free entry. "Commercial samples of negligible value" means commercial samples which have a value, individually or in the aggregate as shipped, of not more than US\$1, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry only if:

- the samples are imported solely for the purpose of soliciting orders for foreign goods;
- valued over US\$1, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples; and
- in the case of textiles and textile products valued over US\$1, the samples meet the additional requirements set forth in paragraph a (2) below.
 - Textile commercial samples of negligible value from Canada or Mexico which qualify for duty free entry are not subject to visa requirements or quota restraint levels. However, textile commercial samples valued over US\$1 shall qualify for such duty free treatment only if additional requirements are set forth in paragraph (1) and (2) of this section are met.

- (1) **Statement on invoice or mail declaration** - The invoice, or the mail declaration in the case of a mail shipment, accompanying imported textile commercial samples shall contain the statement "MUTILATED SAMPLES-9811.00.60". If the invoice or mail declaration does not contain the required statement, or if the merchandise has not been properly marked, torn, perforated or otherwise treated prior to importation so as to be unsuitable for sale or for use other than a sample as provided for duty free entry under subheading 9811.00.60., and if the samples are not goods originating in Canada or Mexico shall be denied entry unless a proper visa, visa waiver or exempt certification is presented.

- (2) **Standards for mutilation of textile samples** - Compliance with the mutilation standards set for in this paragraph shall be considered sufficient to qualify the imported samples for duty-free entry. Variances from the specific mutilation standards may be allowed at the discretion of the appropriate Customs officer at the port of entry only if the variance from the mutilation standard renders the article unsuitable for sale or for use except as a commercial sample. For the purpose of this paragraph, an "indelible marking" is one that is incapable of being erased or obliterated.

Wearing apparel

- **Cutting or tearing.** A section may be cut or torn from the main body of the garment. This cut shall be visible on the outside of the garment and may not be on a seam or border. The cut or tear shall be a minimum of 2 inches in length, unless a shorter cut or tear is required by the size of the garment.
- **Marking.** The garment may be marked with the word "**Sample**" in indelible ink or paint. The size of the word "**Sample**" shall be at least one inch in height unless a smaller mark is required by the size of the garment. The word "**Sample**" shall be placed on a prominent area of the garment which will be visible when worn and shall be in contrasting color to the garment.
- **Punching or cutting.** A hole or section, measuring at least 1 inch in diameter, may be punched or cut into the outside of the garment. The hole or section shall be punched or cut in a prominent area of the garment and in a location where it cannot be covered by a patch or emblem.

Fabrics in continuous lengths or rolls

- **Fabric not over 2 yards in length.** Fabric not exceeding 2 yards in length may either be marked with the word "**Sample**" in indelible ink or paint on the face or front of the fabric and in contrasting color to the fabric or may be perforated with the word "**Sample**" at intervals of one-half yard for the entire length of the fabric. In either case, the word "**Sample**" shall be at least 1 inch in height and not less than 5 inches in length and shall be placed at a perpendicular angle across the fabric.
- **Fabric over 2 yards in length.** Fabric exceeding 2 yards in length, even if mutilated in accordance with the above standards, shall not be considered commercial samples eligible for duty free entry under the commercial samples section.

Fabric swatches

- **Cutting.** A section or hole, not less than 1 inch in diameter, may be cut in the main body of a fabric swatch.
- **Marking.** A fabric swatch may be marked with the word "**Sample**" in indelible ink or paint in contrasting color to the swatch. The word "**Sample**" shall be at least 1 inch in height and at least 2 inches in length.
- **Mutilation not required.** Fabric swatches 8 inches square or smaller need not be cut, marked or otherwise mutilated unless, in their condition as imported, they are suitable for use other than as a commercial sample.

Footwear

- **Drilling.** A hole at least one quarter inch in diameter may be drilled in the sole of each article of footwear.
- **Marking or labeling.** Each article of footwear may either be marked with the word "**Sample**" in indelible ink or paint in contrasting color to the footwear or may have a permanently attached label which reads "**Sample**". The marking or label shall be placed on a readily visible part of the footwear.

Other Articles

For other textile articles, such as furnishings or luggage, a section or hole may be cut, punched or torn from the article or the word "**Sample**" may be marked on the article in indelible ink or paint in contrasting color to the article. The hole, cut or marking shall appear on the outer surface of the article in a location which is visible when the article is in use and shall be of sufficient size to ensure, to the satisfaction of the appropriate Customs officer, that the article is unsuitable for sale or for use except as a commercial sample. 19 C.F.R. 181.62.

2.5 Tracing (Article 403)

2.5.1 Light duty automotive goods

"Traced material" means a material, produced outside the territories of the NAFTA countries, that is imported from outside the territories of the NAFTA countries and is, when imported of a tariff provision in Schedule IV, 19 C.F.R. 181 (Appendix), (Article 403.1, NAFTA Agreement).

For the purpose of calculating the regional value content of light duty automotive goods under the net cost method, the value of the non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are trace materials and incorporated into the good.

The value of each traced material that is incorporated into a good shall be:

- where a producer who imports the traced material from outside the territory of the NAFTA countries and has or takes title to the goods shall be the sum of:
 - the customs value of the traced material,
 - where not included in the customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and where not included in that customs value
 - the duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable and
 - customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries.
- where a producer who imports the traced material from outside the territory of the NAFTA countries but does not have or takes title to the good at the time of importation shall be the sum of:
 - the customs value of the traced material,
 - where not included in the customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was when the producer takes title in the territory of a NAFTA country and
 - when not included in the customs value the costs identified in (a)(iii) and (iv).

- where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person has or takes title to the material at the time of importation the producer must have a statement that is signed by the person from whom he acquired the traced material whether it is in the form as imported or incorporated into another material, and states:
 - the customs value of the traced material,
 - where not included in the customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country and
 - when not included, the costs referred to in (a)(iii) and (iv) above.
- where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person does not have or take title to the material at the time of importation if the producer has a statement that is signed by the person from whom he acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material and states:
 - the customs value of the traced material,
 - where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was located when the first person in the territory of a NAFTA country takes title and
 - when not included, the costs referred to in (a)(iv) above.
- where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires the traced material or material that incorporates the traced materials from a person in the territory of a NAFTA country who has title to it if the producer has a statement that:
 - is signed by the person whom the producer acquired the material or the material that incorporates it and
 - states that the value of the traced material is determined in accordance with the transaction value with respect to a transaction that occurs after the customs value of the traced material was determined.

- where a person other than the producer imports the traced material from outside the territory of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of the NAFTA country if the producer has a statement that:
 - is signed by the person from whom the producer acquired that material, and
 - states that the acquired material is an originating material but does not state any value with respect to the traced material, an amount equal to $VM \times (1-RVCR)$, where VM = the transaction value of the acquired material, and $RVCR$ = the regional value content requirement for the acquired material is expressed as a decimal.
- where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer does not have a statement the value of the traced material or the value of the material that incorporates the traced material is determined in accordance with the transaction value. 19 C.F.R. Pt 181, Part V, Section 9

2.5.2 Heavy duty automotive goods

Heavy duty automotive goods deal with vehicles for the transport of 16 or more persons. The materials subject to tracing are components and listed materials on Annex 403.2, that are used as an original equipment. For purposes of calculating the regional value content of a heavy duty automotive good, the value of the non-originating materials shall be:

For each listed material that is a non-originating material and is a self produced material at the election of the producer:

- the total cost that can be reasonably allocated to that listed material, or
- the sum of:
 - the customs value of each non-originating material imported by the producer of the listed material plus the following "adjustment" when not included in the customs value: The costs of freight, insurance and packing incurred in the transportation of the material to the location of producer, duties and taxes paid or payable in the territory, customs brokerage fees, in-house customs brokerage and clearance service costs, and the cost of waste or spoilage resulting from the usage of the material.
 - the transaction value of each non-originating material that is not imported by the producer of the listed material and is used in the production of the listed material

For each listed material that is non-originating, and this material is acquired and used in the production of the good in the territory of a NAFTA country, either:

- the transaction value of the material, or
- if the producer has a written statement indicating the value of the non-originating materials, the value of such materials would be the sum of:
 - the customs value of each non-originating material imported by the producer of the listed material plus the corresponding "adjustment", or
 - the transaction value of each non-originating material that is not imported by the producer of the listed material.

For each listed material automotive component, assembly or sub-component that is imported from outside the territories of the NAFTA countries.

- where it is imported by the producer, the customs value plus the corresponding "adjustments", and
- where it is not imported by the producer, the transaction value.

For each automotive component assembly, automotive component or automotive sub-component that is an originating material, and is acquired and used by the producer in the production of the good, at the producer's choice:

- the sum of the value of each non-originating, listed material, if the producer has a statement signed by the person from whom the originating material was acquired, establishing the value of each non-originating material,
- an amount equal to the number resulting from applying the following formula: $VM \times (1 - RVCR)$
 VM = the transaction value of the acquired material; and
 $RVCR$ = the regional value content requirement for the acquired material.
- the transaction value of the automotive components assembly, automotive components or automotive sub-components.

For each automotive component assembly, automotive component or automotive sub-component that is non-originating, produced in the territory of the NAFTA country and that is acquired by the producer and used by the producer in the production of the good, either:

- the sum of the value of the non-originating materials incorporated into that non-originating material, if the producer has a statement in which it is specified the value of the non-originating materials, or
- the transaction value of that non-originating automotive component assembly, automotive component or automotive sub-component that is non-originating.

For any other non-originating material that is used by the producer in the production of the good where:

- it is imported by the producer, the customs value of that non-originating material plus the corresponding adjustment, and
- it is not imported by the producer, the transaction value of that non-originating material. 19 C.F.R. Pt. 181, Part V, Section 10.

Note: The producer may chose to treat any material as a non-originating material, and the value would be the transaction value of the material in the calculation of the regional value content of the good.

2.6 Printed advertising materials (Article 306)

Printed advertising materials imported from Canada or Mexico qualify for duty free entry. "Printed advertising material" means goods classified in Chapter 49, HTSUS. This also includes brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, which are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge. 19 C.F.R. 181.63.

3. Additional information

- Articles 306, 403, 405, 505, 507
- 19 C.F.R. 103.12(d); 162.1a(a)
- 19 C.F.R. 181.12, 181.22, 181.49, 181.63, 181.121, 181.122
- Appendix Part II, Section 5; Part V, Sections 9 & 10

NAFTA Customs Procedures Manual

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Introduction

We have produced this customs procedures publication to comply with the North American Free Trade Agreement. Its aim is to reinforce the objectives and purposes of the Treaty, and to explain the relevant provisions that govern the trade of merchandise among Mexico, United States, and Canada. It should also encourage the community of exporters and importers to use the Agreement as a means of improving competition, quality, and the promotion of goods and services that are produced in the region, by following the rules that guarantee greater benefits for the participating parties.

We will review the material in the manual on a regular basis, and will publish any necessary changes in the text in future amendments.

Chapter 1: Certification

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Chapter 1: Certification

1. Introduction

To ensure that the benefits agreed on in the Agreement will not be extended to the goods of other countries, and that control of the operations carried out under the Agreement will not become an obstacle to commerce, the Parties agreed to establish a similar process for producing a common certificate of origin.

The Parties agreed to adopt a unified format for the certificate of origin for the process of certification. This document will certify that a good imported to any of the countries in the Agreement qualifies as an originating good.

2. Purpose

This chapter lists cases and conditions in which a certificate of origin may be issued for importing goods into a national territory with preferential treatment, as well as the obligations that apply to persons importing goods with preferential treatment, and to the exporters or producers who issue certificates on such goods.

3. Procedure

3.1 Certification

3.1.1 Persons involved

Persons directly involved with the use or presentation of a certificate of origin for importing goods into a national territory with preferential tariff treatment are importers, exporters, and producers of those goods.

Importers

People who import goods into a national territory under the preferential tariff treatment must have available an original or a copy of the certificate of origin at the time of importation. Importers are not obliged to present the original certificate of origin to customs at the time of entry, unless it is for farm products or goods identical or similar to those subject to countervailing duties, but in all

cases a copy of the certificate of origin must be given to a customs agent or a deputy. If importers do not have the certificate, they must pay the applicable tariff according to the general tax law for importation (*Ley del Impuesto General de Importación*), and countervailing duty, if applicable.

According to the articles of the Agreement and also to the "Resolución que establece las reglas de carácter general relativas a la aplicación de las disposiciones en materia aduanera del Tratado de Libre Comercio de América del Norte", referred to from here on as "the Resolution", all people who import goods into the national territory under the preferential tariff must provide the following information:

- a written declaration that a good qualifies as originating;

Importers must indicate on the entry document the code that corresponds to the applicable preference rate for merchandise originating from the U.S., which will be "G8" and for merchandise originating from Canada, which will be "D9".

In order to determine the applicable preferential tariff, importers must follow the "Acuerdo por el que se establecen las Reglas de marcado de país de origen para determinar cuando una mercancía importada a territorio nacional se puede considerar una mercancía estadounidense o canadiense de conformidad con el Tratado de Libre Comercio de América del Norte", published in the Diario Oficial de la Federación on January 7, 1994.

- a certificate of origin;

Those who import merchandise into the national territory under the preferential tariff treatment must have in their possession a valid certificate of origin at the time the goods are imported; the certificate of origin can be the original or a plain copy or facsimile.

A copy of the certificate does not necessarily have to contain the full legal signature of the exporter who filled it out and signed it. However, the copy must be signed.

When importers do not have a valid certificate of origin at the time of importation, they must pay the tariff that corresponds to the general rate in the *Ley del Impuesto General de Importación*. If importers obtain a certificate of origin afterwards that covers the same merchandise, they can request a refund of the excess tax paid by writing to the Administración

Local de Recaudación in the area within a twelve month period after the importation was made. Importers must demonstrate that the good qualified as originating at the time of importation, and attach a copy of the corrected import declaration, the customs entry form with additions, and a copy of the certificate of origin.

- a copy of the certificate of origin for the customs agent or representative;

Persons who import merchandise under the preferential tariff treatment must supply a copy of the certificate of origin to the customs agent or representative responsible for clearing the goods through customs. This copy can be a simple copy or a facsimile, and does not need to contain the full legal signature of the exporter.

- a certificate of origin if required by customs authorities;

Those who import under the preferential tariff treatment must provide an original or copy of the certificate of origin to customs authorities upon request within a period of 15 days beginning the day after the date of the notification.

If the certificate of origin is illegible, defective, or is completed without following the rules of the treaty, the importer will be granted a period of ten working days to present a valid certificate of origin.

- notification of mistakes or inexact information in the certificate of origin;

When importers believe that a certificate contains inexact information, they must present a corrected declaration without delay and pay the corresponding duty.

No penalties will be paid by importers who have incorrectly declared the origin of the goods, as long as they present a corrected declaration and pay any duty owing before customs authorities investigate the declaration or carry out a customs inspection as a result of the random selection process.

- a record of all official documents;

Those who import merchandise under the preferential tariff treatment must keep an original or copy of the certificate of origin, the customs entry form, invoice, and all other documents relating to the importation of the goods, for a period of five years to comply with NAFTA rules and ten years for Mexican taxation purposes. In each case, time is counted from the day of the importation.

- any relevant documents to customs authorities upon request;

Importers must maintain the documentation related to the importation either by electronic means or in the terms authorized by the Secretaría de Hacienda y Crédito Público under general regulations published in the Diario Oficial de la Federación. These documents must be shown to any customs authority upon request.

Exporters and producers

When exporters are also producers of a good intended for importation under preferential tariff treatments, they are responsible for determining the origin of the good according to the rules established by NAFTA. If the merchandise qualifies as originating, exporters must fill out and sign the certificate of origin, giving the original or a copy to the importer. Exporters must not issue a certificate of origin for goods that do not satisfy the rules of origin laid down in the Agreement.

An exporter who is not the producer of the goods must obtain the following information in order to issue a certificate of origin:

- sufficient information from the producer to determine if the good is originating;
- a written declaration from the producer that declares the good to be originating;
- a certificate that covers the good, filled out and signed by the producer and supplied voluntarily to the exporter.

According to article 504 of the Agreement and General Rules 29 and 30 of the Resolution, Mexican exporters or producers who issue a certificate of origin that covers goods imported into the United States or Canada under the preferential tariff treatment in accordance with the treaty, must fulfill the following obligations:

- supply a copy of the certificate of origin as required by customs authorities;

Any exporter or producer who has voluntarily provided an importer with a copy of a certificate of origin must furnish a copy of the certificate upon request to the customs authorities in a period of 15 days beginning on the day after the notification was issued.

- maintain all documentation related to the origin of the goods;

Exporters or producers in Mexico who fill out a certificate of origin for goods imported into Canada or the United States under preferential tariff treatment must keep all records relating to the origin of the goods, including those recording:

- the purchase, cost and value of, as well as payment for the good that is exported from its territory;
- the purchase, cost and value of, as well as payment for all materials, including indirect materials, used in the production of the good that is exported from its territory; and
- the production of the good in the form in which it was exported from its territory.

Such documents must be kept for five years under article 505 of the Agreement for the purpose of verification of origin which may be carried out by customs authorities from the United States or from Canada, and for a period of 10 years according to article 30 of the fiscal code of Mexico (Código Fiscal de la Federación) for purposes of compliance with domestic legislation. These periods will run from the date the certificate was signed.

Records can be kept as documents, on magnetic disks and tapes, or in any other data processing medium.

- notify certificate holders immediately if incorrect information is included in a certificate of origin;

Exporters and producers who have filled out and signed a certificate of origin, and who have reason to believe that it contains inaccurate information, must notify everyone who has received a copy without delay and, in written form, of any change affecting the accuracy or validity of the certificate.

No penalties will be applied to national exporters or producers that have filled out and signed a certificate of origin containing incorrect information, as long as they provide written notice of any change that could affect the accuracy or validity of the certificate to all the people who have received it, before the competent authorities begin an investigation to verify the respective certificate of origin.

- notify certificate holders of any ruling establishing that a good is not originating.

When customs authorities issue a ruling to an exporter or producer of a good in which they determine that the good does not qualify as originating, the exporter or producer must inform everybody who received a copy of the certificate of origin related to that good.

3.1.2 Language

The certificate of origin must be filled out by the exporter of the good in Spanish, English or French. If it is filled out in a language other than Spanish, a Spanish translation must be presented when requested by a customs authority. The translation can be signed by the exporter or producer or by the importer, and can be attached separately or included in the same certificate.

3.1.3 Applicability of a certificate of origin

According to article 501 of the Agreement, the certificate of origin can cover:

- a single importation of an originating good into a national territory; or
- multiple importations of identical goods into a Party's territory within a specified period, not exceeding 12 months.

Validity

It is considered that a certificate of origin is valid when it has been filled out according to the Agreement, and it remains valid for four years after the date on which it was signed.

3.2 Forms

3.2.1 Official forms of the certificate of origin

On December 30, 1993, Mexico published in the Diario Oficial de la Federación the Resolución que establece las reglas de carácter general relativas a la aplicación de las disposiciones en materia aduanera del Tratado de Libre Comercio de América del Norte. Annex I of that Resolution contains the official forms that have been approved by the United States and Canada (English and French versions), as well as the Spanish version of the same trilateral form.

When importing originating goods into Mexico under the Agreement, importers must use a certificate of origin in one of the forms shown in Annex I.

Anyone can freely copy these forms so that any document which adequately reproduces their content will be accepted by the customs authority, without the necessity of authorizing or approving the reproduction in advance.

The official forms can be requested in Mexico at the Dirección General de Política de Ingresos y Asuntos Fiscales Internacionales of the Secretaría de Hacienda y Crédito Público, from the Secretaría de Comercio y Fomento Industrial, and from any customs office.

3.2.2 Computerized certificates of origin

Rule 15 of the Resolution indicates that the certificate of origin can be presented in a computerized form, as long as it contains the same information as the approved forms. However, the terms and conditions necessary for the implementation of Rule 15 have so far not been established in Mexico.

3.3 Exceptions

3.3.1 Non-commercial imports with a value which does not exceed US \$1,000

Non-commercial importation of originating goods with a value which does not exceed US \$1,000, or an equivalent amount in the Party's currency, does not require a certificate of origin, provided it does not form a part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of the treaty.

For purposes of non-commercial imports that do not exceed US \$1,000, such imports will be presumed to originate from the United States or Canada when they have been marked or labelled as such.

3.3.2 Commercial imports with a value of US \$1,000 or less

When commercial imports of originating goods do not exceed a limit of US \$1,000, the exporter, producer or importer of the goods may submit a written declaration certifying that the goods qualify as originating. This declaration must be attached to or written on the invoice that covers the good and should be printed by hand or typed.

The declaration referred to in the above paragraph has no fixed form, but must be signed by the person who issues it. See the example below.

Example

I, Enrique López as the producer of the good mentioned in this invoice, certify that this good was produced in the territory and that it qualifies as originating according to the rules of origin specified for this merchandise in the North American Free Trade Agreement.

(Signature)

An importation is deemed to be "for commercial purposes" when the relevant goods are intended for sale or use in commercial, industrial, or similar operations.

3.4 Penalties

According to article 508 of the Agreement, each member country will apply civil or administrative penal sanctions for any infringement of its laws or regulations related to the Agreement. Consequently, in Mexico, the *Ley Aduanera*, the Código Fiscal and the Código penal are applicable.

- Exporters or producers who voluntarily and without delay inform all interested parties of any inaccurate information contained in a certificate of origin will not be penalized. Such information should be produced before the competent authorities begin an investigation.

- Importers who voluntarily and without delay submit a corrected entry form and pay duties owing upon learning that the certificate of origin contains inaccurate information will not be subject to penalty either. However, such payment must be made before the authorities begin an investigation.

3.5 Completing the certificate of origin

In order to receive preferential tariff treatment, the certificate of origin must be filled out completely and legibly by the exporter of the good, and the importer must have possession of it at the time of importation; the certificate may be typed or printed by hand.

Under NAFTA, the Parties agreed upon a unified certificate of origin for all three countries, as well as common instructions for filling it out. According to these instructions, there are some fields which must be filled out completely, and others that can be omitted; in some cases an option exists in this respect. The most frequent questions concerning the certificate are answered below.

Field 1 - Exporter's information

State the full legal name, address (including country) and tax identification number of the exporter. Mexican exporters should include the assigned code for the federal taxpayer's registry number (RFC). United States' exporters should show the employer's identification number assigned by the Internal Revenue Service or the U.S. Department of the Treasury or if necessary, the employer's Social Security Number. Canadian exporters should include the exporter number assigned by Revenue Canada.

This field must be filled in.

Options: Not applicable.

Explanation: Not applicable.

. Field 2 - Period covered

The From "DE" date is the date upon which the certificate becomes applicable, and the To "A" date is the date upon which it expires (in both cases indicating day, month, and year).

This field can be omitted.

Options: Not applicable.

Explanations:

- A certificate of origin can cover a single operation or various importations of goods identical to those described in the certificate.
- This field should be filled out only when the certificate covers several imports of identical goods (as described in field 5) that are imported into one of the member countries. In this case, the imports should be carried out within the period specified in field 2, which must not exceed one year.

Field 3 - Producer's information

State full legal name, address (including country) and tax identification number.

This field must be filled in.

Options:

- If you wish this information to be confidential, write "available to customs upon request."
- If the producer and the exporter are the same, write "same".
- If the producer is not known, write "unknown".

Explanation: if the certificate covers goods from more than one producer, attach a list of additional producers with the legal name, address (including country) and tax identification number of each producer, cross-referenced to the goods described in field 5.

Field 4 - Importer's information

State full legal name, address (including country) and tax identification number.

This field must be filled in.

Options:

- If importer is not known, state "unknown".
- If there are multiple importers, state "various".

Explanation: Not applicable.

Field 5 - Description of goods

Provide a full description of all goods including sufficient details to relate each good to its invoice description and to the Harmonized System for classifying imports.

This field must be filled in.

Options: Not applicable.

Explanation: if the certificate covers a single shipment, give the invoice number as shown on the commercial invoice for each good. If not known, indicate another unique reference number, such as the shipping order number. In case of insufficient space, a separate page can be attached to the certificate.

Field 6 - Tariff classification

Identify the Harmonized System tariff classification to six digits, for each good described in field 5.

This field must be filled in.

Options: Not applicable.

Explanation: if the good is subject to a specific rule of origin in Annex 401 that requires eight digits, identify to eight digits, using the Harmonized System tariff classification of the country into whose territory the good is imported.

For Mexico, the tariff classification must be determined in accordance with the *Ley del Impuesto General de Importación*. In case of doubt, a ruling may be requested from the Administración Especial Jurídica de Ingresos, of the Secretaría de Hacienda y Crédito Público.

Field 7 - Preferential treatment criteria

For each good described in field 5, state which criterion is applicable.

This field must be filled in.

Options: For each good described in field 7, indicate the appropriate letter (A-F) under which it qualifies as an originating good and is thus eligible for preferential treatment. Each good described here must meet at least one of the preferential treatment criteria.

Explanation: The criteria for preferential treatment (items "A" through "F") are listed in the instructions for field 7.

Field 8 - Producer's information

For each good described in field 5, state "yes" if you are the producer of the good. If you are not the producer of the good, state "no" followed by (1), (2), or (3), depending on whether this certificate was based upon:

- your knowledge of whether the good qualifies as an originating good;
- your reliance on the producer's written representation (other than a certificate of origin) that the good qualifies as an originating good; or
- a completed and signed certificate for the good, voluntarily provided to the exporter by the producer.

This field must be filled in.

Options: "yes" or "no" depending on whether the person who filled out the certificate is the producer of the good, and (1), (2), or (3) as applicable, when the person is not the producer of the good.

Explanation: Not applicable.

Field 9 - Method to determine the origin of a good

For each good described in field 5 which is subject to a regional value content (RVC) requirement, indicate "NC" if the RVC is calculated according to the net cost method; otherwise, indicate "no".

This field must be filled in.

Options:

- Use "NC" when the good is subject to a required regional value content, calculated by the net cost method.
- Use "no" when the good is not subject to a required regional value content, and/or the net cost method is not used.

Explanation: when the "NC" is calculated for a fixed period, identify the beginning and ending dates, giving day, month, and year.

Field 10 - Country of origin

Indicate the name of the country that corresponds to the preferential tariff that is applied in terms of Annex 302.2 according to the marking rules or each country's schedule.

This field must be filled in.

Options: "US" or "CA" for all goods imported into Mexico.

Explanation: identify the name of the country ("MX" or "US" for agricultural or textile goods exported to Canada; "US" or "CA" for all goods exported to Mexico; or "CA" or "MX" for all goods exported to the United States). For all other originating goods exported to Canada, indicate "MX" or "US", as appropriate, if the goods originate in either of these countries, within the meaning of Annex 302.2, and the transactional value of the goods does not increase by more than 7% for any subsequent processing in the other NAFTA country; otherwise indicate as "JNT" for "joint production".

Field 11 - Authorized signature

Name of the company (exporter's or producer's), name, signature and position of the authorized person, date indicating day, month and year, telephone and fax number.

This field must be filled in.

Options: this field can be filled in by the exporter or the producer of the good, or a person authorized to complete and sign a certificate of origin on their behalf.

Explanation: the field must be completed, signed and dated by the exporter or producer (where the latter voluntarily fills out the certificate). The date must be the day when the certificate was completed and signed. Filling in this field makes the person signing the certificate responsible for the information it contains.

4. References

Diario Oficial de la Federación, December 20, 1993. Decreto de Promulgación del Tratado de Libre Comercio de América del Norte.

Diario Oficial de la Federación, December 30, 1993. Resolución que establece las reglas de carácter general relativas a la aplicación de las disposiciones en materia aduanera del Tratado de Libre Comercio de América del Norte.

Tratado de Libre Comercio de América del Norte
Certificado de Origen
(Instrucciones al reverso)

Llenar a máquina o con letra de molde

1. Nombre y domicilio del exportador: Número de Registro Fiscal:		2. Período que cubre: <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> D D M M A A De: </div> <div style="text-align: center;"> D D M M A A A: </div> </div>				
3. Nombre y domicilio del productor: Número de registro fiscal:		4. Nombre y domicilio del importador: Número de Registro Fiscal:				
5. Descripción del (los) bien(es):	6. Clasificación arancelaria	7. Criterio para trato preferencial	8. Productor	9. Costo Neto	10. País de origen	

Declaro bajo protesta de decir verdad que:

- La información contenida en este documento es verdadera y exacta, y me hago responsable de comprobar lo aquí declarado. Estoy consciente que seré responsable por cualquier declaración falsa u omisión hecha en o relacionada con el presente documento.
- Me comprometo a conservar y presentar, en caso de ser requerido, los documentos necesarios que respalden el contenido del presente certificado, así como a notificar por escrito a todas las personas a quienes entregue el presente certificado, de cualquier cambio que pudiera afectar la exactitud o validez del mismo.
- Los bienes son originarios del territorio de una o más de las partes y cumplen con los requisitos de origen que les son aplicables conforme al Tratado de Libre Comercio de América del Norte, no han sido objeto de procesamiento ulterior o de cualquier otra operación fuera de los territorios de las Partes; salvo en los casos permitidos en el artículo 411 o en el Anexo 401.

Este certificado se compone de _____ hojas, incluyendo todos sus anexos.

11. Firma autorizada:	Empresa:
Nombre:	Cargo:
Fecha: D D M M A A	Teléfono: Fax:

INSTRUCCIONES PARA EL LLENADO
DEL CERTIFICADO DE ORIGEN

Con el propósito de recibir trato arancelario preferencial, este documento deberá ser llenado en forma legible y en su totalidad por el exportador del bien, y el importador deberá tenerlo en su poder al momento de formular el pedimento de importación. Queda a elección del productor llenar de manera voluntaria este documento, a fin de que sea utilizado por el exportador del bien. Favor de llenar a máquina o con letra de molde.

CAMPO 1: Indique el nombre completo, denominación o razón social, domicilio (incluyendo el país) y el número del registro fiscal del exportador. El número del registro fiscal será:

En Canadá: el número de identificación del patrón o el número de identificación del importador/exportador, asignado por el Ministerio de Ingresos de Canadá.

En México: la clave del registro federal de contribuyentes (R.F.C.).

En los Estados Unidos de América: el número de identificación del patrón o el número del seguro social.

CAMPO 2: Deberá llenarse sólo en caso de que el certificado ampare varias importaciones de bienes idénticos a los descritos en el Campo 5, que se importen a algún país Parte del Tratado de Libre Comercio de América del Norte (TLCAN) en un período específico no mayor de un año (período que cubre). La palabra "DE" deberá ir seguida por la fecha (Día/Mes/Año) a partir de la cual el Certificado ampara el bien descrito en el certificado. (Esta fecha puede ser anterior a la fecha de firma del Certificado). La palabra "A" deberá ir seguida por la fecha (Día/Mes/Año) en la que vence el período que cubre el Certificado. La importación del bien sujeto a trato arancelario preferencial con base en este Certificado deberá efectuarse durante las fechas indicadas.

CAMPO 3: Indique el nombre completo, denominación o razón social, domicilio (incluyendo el país) y el número de registro fiscal del productor, tal como se describe en el campo 1. En caso de que el Certificado ampare bienes de más de un productor, anexe una lista de los productores adicionales, incluyendo el nombre completo, denominación o razón social, domicilio (incluyendo el país) y número de registro fiscal, haciendo referencia directa al bien, descrito en el campo 5. Cuando se desee que la información contenida en este campo sea confidencial, podrá señalarse de la siguiente manera: "disponible a solicitud de la aduana". En caso de que el productor y el exportador sean la misma persona, indique la palabra "mismo". En caso de desconocerse la identidad del productor, indicar la palabra "desconocido".

CAMPO 4: Indique el nombre completo, denominación o razón social, domicilio (incluyendo el país) y el número de registro fiscal del importador, tal como se describe en el campo 1. En caso de no conocerse la identidad del importador, indicar la palabra "desconocido". Tratándose de varios importadores, indicar la palabra "diversos".

CAMPO 5: Proporcione una descripción completa de cada bien. La descripción deberá ser suficiente para relacionarla con la descripción contenida en la factura, así como con la descripción que corresponda al bien en el Sistema Armonizado. En caso de que el Certificado ampare una sola importación del bien, deberá indicarse el número de factura, tal como aparece en la factura comercial. En caso de desconocerse, deberá indicarse otro número de referencia único, como el número de orden de embarque.

CAMPO 6: Declare la clasificación arancelaria a seis dígitos que corresponda en el Sistema Armonizado a cada bien descrito en el campo 5. En caso de que el bien esté sujeto a una regla específica de origen que requiera ocho dígitos, de conformidad con el anexo 401, deberá declararse a ocho dígitos la clasificación arancelaria del Sistema Armonizado que corresponda en el país a cuyo territorio se importa el bien.

CAMPO 7: Identifique el criterio aplicable (de la A a la F) para cada bien descrito en el campo 5. Las reglas de origen se encuentran en el capítulo 4 y en el anexo 401 del TLCAN. Existen reglas adicionales en el anexo 703.2 (determinados productos agropecuarios), apéndice 6-A del anexo 300-B (determinados productos textiles) y anexo 308.1 (determinados bienes para procesamiento automático de datos y sus partes). **NOTA:** Para poder gozar del trato arancelario preferencial, cada bien deberá cumplir alguno de los siguientes criterios.

Criterios para trato preferencial:

A. El bien es "obtenido en su totalidad o producido enteramente" en el territorio de uno o más de los países partes del TLCAN, de conformidad con el artículo 415. **NOTA:** La compra de un bien en el territorio de un país del TLCAN no necesariamente lo convierte en "obtenido en su totalidad o producido enteramente". Si el bien es un producto agropecuario, véase el criterio F y el Anexo 703.2 (Referencia: Artículo 401(a) y 415).

B. El bien es producido enteramente en el territorio de uno o más de los países partes del TLCAN y cumple con la regla específica de origen establecida en el Anexo 401, aplicable a su clasificación arancelaria. La regla puede incluir un cambio de clasificación arancelaria, un requisito de valor de contenido regional o una combinación de ambos. El bien debe cumplir también con todos los demás requisitos aplicables del capítulo IV. En caso de que el bien sea un producto agropecuario, véase también el criterio F y el Anexo 703.2 (Referencia: Artículo 401(b)).

C. El bien es producido enteramente en territorio de uno o más de los países partes del TLCAN exclusivamente con materiales originarios. Bajo este criterio, uno o más de los materiales puede no estar incluido en la definición de "obtenido en su totalidad o producido enteramente", conforme al artículo 415. Todos los materiales usados en la producción del bien deben calificarse como "originarios", al cumplir con alguna de las reglas de origen del artículo 401(a) a (d). Si el bien es un producto agropecuario, véase también el criterio F y el Anexo 703.2 (Referencia: artículo 401(c)).

D. El bien es producido en el territorio de uno o más de los países partes del TLCAN, pero no cumple con la regla de origen aplicable establecida en el anexo 401, porque alguno de los materiales no originarios no cumple con el cambio de clasificación arancelaria requerido. El bien, sin embargo, cumple con el requisito de valor de contenido regional establecido en el artículo 401(d). Este criterio es aplicable únicamente a las dos circunstancias siguientes:

1. El bien se importó al territorio de un país parte del TLCAN sin ensamblar o desensamblado, pero se clasificó como un bien ensamblado de conformidad con la regla general de interpretación 2(a) del Sistema Armonizado; o

2. El bien incorpora uno o más materiales no originarios clasificados como partes de conformidad con el Sistema Armonizado, que no pudieron cumplir con el cambio de clasificación arancelaria porque la partida es la misma, tanto para el bien, como para sus partes, y no se divide en subpartidas, o las subpartidas es la misma, tanto para el bien, como para sus partes, y esta no se subdivide.

NOTA: Este criterio no es aplicable a los capítulos 61 a 63 del Sistema Armonizado (Referencia: Artículo 401(d)).

E. Algunos bienes de procesamiento automático de datos y sus partes, comprendidos en el anexo 308.1, no originarios del territorio de uno o más de los países partes del TLCAN, se consideran como si fueran originarios al momento de su importación al territorio de un país parte del TLCAN procedentes del territorio de otro país parte del TLCAN, cuando la tasa arancelaria de nación más favorecida aplicable al bien se ajusta a la tasa establecida en el Anexo 308.1 y es común para todos los países partes del TLCAN (Referencia Anexo 308.1).

F. El bien es un producto agropecuario originario de conformidad con el criterio para trato preferencial A, B o C, arriba mencionados, y no está sujeto a restricciones cuantitativas en el país importador del TLCAN, debido a que es un "producto calificado" conforme al Anexo 703.2, Sección A o B (favor de especificar). Un bien listado en el apéndice 703.2.B.7 está también exento de restricciones cuantitativas y tiene derecho a recibir trato arancelario preferencial, siempre que cumpla con la definición de "producto calificado" de la Sección A del Anexo 703.2. **NOTA 1:** Este criterio no es aplicable a bienes que son totalmente originarios de Canadá o los Estados Unidos que se importen a cualquiera de dichos países. **NOTA 2:** Un arancel-cupo no es una restricción cuantitativa.

CAMPO 8: Para cada bien descrito en el campo 5, indique "SI" cuando usted sea el productor del bien. En caso de que no sea el productor del bien, indique "NO", seguido por (1), (2) o (3), dependiendo de si el certificado se basa en uno de los siguientes supuestos:

(1) su conocimiento de que el bien califica como originario;

(2) su confianza razonable en una declaración escrita del productor (distinta a un certificado de origen) de que el bien califica como originario; o

(3) un certificado que ampare el bien, llenado y firmado por el productor, proporcionado voluntariamente por el productor al exportador.

CAMPO 9: Para cada bien descrito en campo 5, cuando el bien este sujeto a un requisito de valor de contenido regional (VCR), indique "CN" si el VCR se calculó con base en el método de costo neto; de lo contrario indique "NO". Si el VCR se calculó de acuerdo al método de costo neto en un período de tiempo, identifique las fechas de inicio y conclusión (DD/MM/AA) de dicho período. (Referencia: artículos 402.1 y 402.5).

CAMPO 10: Indique el nombre del país ("MX" o "EU" tratándose de bienes agropecuarios o textiles exportados a Canadá; "EU" o "CA" para todos los bienes exportados a México; o "CA" o "MX" para todos los bienes exportados a los Estados Unidos) al que corresponde la tasa arancelaria preferencial, aplicable con los términos del anexo 302.2, de conformidad con las Reglas de Marcado o en la lista de desgravación arancelaria en cada parte.

Para todos los demás bienes originarios exportados a Canadá, indique "MX" o "EU", según corresponda, si los bienes originan en ese país parte del TLCAN, en los términos del anexo 302.2 y el valor de transacción de los bienes no se ha incrementado en más de 7% por algún procesamiento ulterior en el otro país parte del TLCAN, en caso contrario, indique "JNT" por producción conjunta (Referencia: Anexo 302.2).

CAMPO 11: Este campo deberá ser llenado, firmado y fechado por el exportador. En caso de que el productor llene el Certificado para uso del exportador, deberá ser llenado, firmado y fechado por el productor. La fecha deberá ser aquella en que el Certificado se llenó y firmó.



IMPRESOR AUTORIZADO POR LA SHCP PARA IMPRIMIR FORMAS FISCALES PERMISC # 322-A-B-1111

Chapter 2: Marking

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Chapter 2: Marking

1. Introduction

Under Annex 311, NAFTA countries are required to do two things: first, they must establish rules of origin to determine whether a good is to be considered originating from the U.S., Canada or Mexico; and second, they must develop rules governing the country of origin marking that all goods have to carry.

2. Purpose

This chapter describes and explains the country of origin marking rules, and points out the difference between them and the rules of origin. In addition, the requirements for the country of origin marking which all goods must carry under NAFTA are clearly outlined.

3. Procedure

3.1 Country of origin marking rules

The country of origin marking rules applied in Mexico were printed in the Diario Oficial de la Federación on January 7, 1994, under the country of origin marking rules agreement for the purpose of determining whether a good is considered originating from the U.S. or Canada, when imported into national territory under NAFTA.

These marking rules are not to be confused with the country of origin rules used to establish preferential tariff treatment under Chapter 4 of NAFTA. However, the latter serve to determine which North American products qualify for preferential tariff treatment when imported into another NAFTA Party. The country of origin marking rules are used to determine the country of origin of merchandise in the following cases:

- where the importing country requires that a good bear country of origin markings;
- for purposes of determining the preferential tariff (U.S., Canadian or Mexican) corresponding to goods that meet the origin rules for preferential tariff treatment, according to Annex 302.2 (Tariff Elimination);

- for the purposes of Annex 300-B (Textile and Apparel goods); and
- for any other purpose agreed among the Parties.

Under NAFTA, the country of origin of a good must be determined in accordance with the following general rules, applied in the order of priority shown.

- a) The country of origin of a good is that country for which any of the following assumptions are true:
 - (1) a good is wholly obtained or produced in a given country, as in the case of minerals extracted or vegetables harvested;
 - (2) a good is entirely produced from domestic materials¹, as in the case of clothing produced from material, thread, and buttons all of the same country;
 - (3) each of the foreign materials² incorporated in a good undergoes an applicable tariff classification change according to the rules laid down in the Annex, Specific Rules of the Agreement, and meets any other requirement established under that annex. These "tariff classification change" rules are used primarily to determine which non-originating materials from a given country can be used during the manufacture of a good in that country without affecting its classification as an originating good.

Example

In the case of a windshield classified under heading 70.07, the Annex, Specific Rules of the Agreement, establishes that non-originating goods must undergo: "a change to headings 70.07 - 70.08 from any other heading, including another heading within the same group".

Namely, a car windshield manufactured in the U.S. is to be considered originating even though during the manufacturing process, materials from outside the U.S. (Canadian glass pellets) were used. As the Canadian glass pellets are classified under heading 7002.10, this complies with the classification change. On the other hand, such a windshield will not be considered as originating from the U.S. if during the manufacturing process, Canadian tempered glass was used. (This is classified under subheading 70.07 and does not comply with the classification change.

- b) When the country of origin cannot be determined according to the previous provisions, the country of origin shall be:
- (1) the country or countries of origin of the material that confer on the good its essential characteristics³; or
 - (2) the country or countries of origin, based on an inventory control system⁴, when the material that confers on the good its essential characteristics is a fungible good that has been mixed, and is impracticable to recognize physically. The inventory methods that should be used are the same as those established in Chapter 4 of NAFTA.

Example

Bicycle brakes classified under heading 87.14 according to the specific rules obtain their essential characteristics from the brake's lining, (classified under subheading 6813.10). Thus, regardless of the country where the brake is finally manufactured, the country of origin will be the country of origin of the lining.

Note: The provisions stated above are not applicable to any good classified as a set or group according to the nomenclature of the Tarifa de la *Ley del Impuesto General de Importación* (TIGI), or to any good classified as a set or group under a tariff classification, in accordance with the Regla General 3(2) of this law.

- c) When the country of origin cannot be determined according to the preceding sections (a and b) and the relevant good is considered a set, group or combination under the TIGI, or is assigned to a tariff classification corresponding to a set, group, combination or compound good, according to Regla General 3(2) of the TIGI, the country of origin of the good shall be the country or countries of origin of all of the materials that deserve consideration as conferring on the good its essential characteristics.

Example

A language course, consisting of a U.S. book and a Canadian cassette, will be considered as originating from both the U.S.A. and Canada, according to this criterion.

- d) When the country of origin cannot be determined according to the foregoing provisions, the country of origin shall be:
- (1) the last country where the good underwent a production process other than simple assembly⁵ or minor processing⁶; or
 - (2) when the good is produced by simple assembly, the country of origin will be one of the following:
 - the country where the good is assembled, when the parts considered to confer on the good its essential characteristic do not originate from the same country;
 - the country of origin of the assembled parts, when the parts considered to confer on the good its essential characteristic have a common country of origin.

3.2 Special treatment for originating goods

Notwithstanding the above, if after all of the preceding rules have been applied to originating goods (as defined in Chapter 4 of NAFTA) it is still not possible to determine a country of origin, the country of origin shall then be the last NAFTA country where the good underwent a production process other than a minor process, provided that a valid certificate of origin for the good has been signed and completed. Specifically, if according to the country of origin marking rules the country of origin is other than a NAFTA country, the country of origin will be the last NAFTA country where the good was subject to a manufacturing process, other than a minor process, provided that the good is originating from the region, according to NAFTA provisions (Chapter 4), and a certificate of origin has been completed and signed in that country.

3.3 Goods re-exported to Mexico

When a good processed abroad is considered as originating from Mexico, its country of origin will not be Mexico but rather the last NAFTA country where the good underwent a production process other than a minor process.

3.4 Special provisions for fungible goods

In the case of fungible goods from different countries of origin, where these goods are mixed the country of origin will be:

- the country of origin of all the goods; or
- when the country of origin of the mixed good cannot be directly recognized, the country or countries of origin may be determined through the inventory control system, mentioned above.

3.5 Specific provisions for *de minimis*

In spite of the fact that the foreign materials incorporated in a good do not meet the requirements for a tariff classification change according to the specific rules of the Agreement (Annex), or do not comply with any other requirement provided by such rules, a good may be considered as originating when:

- the total value of foreign materials does not exceed 7% of the total value of the good, excepting the following goods:
 - live animals;
 - meat and edible meat offals;
 - fish, crustaceans and molluscs, and all aquatic invertebrates;
 - milk and milk products, eggs, natural honey, and animal consumable products not included or contained within other headings;
 - legumes and vegetables, plants, roots, and nutritional tubers;
 - consumable fruits, melon, and bitter peels;
 - milling products, malt, corn flour, starch, inulin, wheat germ;
 - oleaginous seeds and fruits, other seeds and fruits, plants for industrial and medical purposes, straw, and forages;
 - vegetable and animal oil and fat and derivatives, artificial nutritive oils, vegetable and animal wax;
 - sugar and candy items; or
 - preparations of vegetables, fruits, or other plant parts.
- The materials or components in question included in a good classified under Chapters 50 to 63 of the Harmonized System (textiles and their products) will not be taken into account for determining a country of origin if they account for less than 7% of the total weight of the good.

3.6 Material not considered when determining the country of origin of a good

The following materials are to be excluded when determining whether a foreign material qualifies for a tariff classification change, and satisfies the requirements under the Agreement:

- packing materials and containers used with a good which is for retail sale, as long as such materials are classified along with the good;
- accessories, parts, and tools, provided that they are delivered, classified, and shipped along with the good;

- packing materials and containers which contain the good for shipment;
- indirect materials⁷.

3.7 Country of origin marking rules

The purpose of these rules is to prevent the country of origin rules from becoming obstacles to foreign trade.

Under the provisions of NAFTA (Annex 311), member countries are entitled to require that the goods of other Parties be marked in accordance with the country of origin rules, in a manner that minimizes difficulties, costs and inconveniences, but at the same time displays a country of origin marking that indicates the name of the country of origin to the final purchaser⁸ of the good. The mark can be an adhesive label, imprint or tag, or may be painted on, and shall be readily visible,⁹ legible,¹⁰ and sufficiently permanent¹¹.

3.8 Goods exempted from country of origin marking

NAFTA establishes: "Any NAFTA good will be exempted from being marked" when:

- it is incapable of being marked;
- it cannot be marked prior to export without causing injury to the good;
- it cannot be marked except at a cost that is substantial in relation to its customs value¹², thus discouraging its export to another Party;
- it cannot be marked without materially impairing its function or substantially detracting from its appearance;
- it is in a container which is reasonably marked so as to indicate to the final purchaser the country of origin;
- it is raw material;
- it is imported solely for the importer's use and cannot be retailed in the same condition as imported;
- it will undergo production in the importer's territory by the importer or on the importer's behalf, in a manner that would result in the good becoming a good originating in the importer's country, in accordance with the marking rules of that country;

- it is a good for which, by reason of its character or import circumstances, the ultimate purchaser would reasonably know its country of origin even though that good is not marked;
- it was produced at least 20 years prior to importation;
- it is imported without the required marking and cannot be marked after importation without substantial cost in relation to its customs value, provided that the failure to mark was not for the purpose of avoiding the country of origin marking rules;
- it is for the purposes of temporary free-admission, in transit, in bond, or otherwise under customs administration control;
- it is an original work of art; or
- it is classified under subheading 6904.10, or heading 85.41 or 85.42.

Each NAFTA Party is to determine whether the usual container¹³ bears the country of origin marking, except for the numerals VI, VII, VIII, IX, X, XII, XIII and XIV.

3.9 Container requirements

- Containers imported empty do not require the country of origin marking, but it may be requested that the country of origin of the contents be marked on the container.
- Containers imported full are not required to show a country of origin marking, but indication of the origin of their contents may be required. However, the country of origin has to appear on the good and the container must be easy to open for inspection, or the marking of the contents has to be visible through the container.

3.10 General requirements

NAFTA Parties have the right to allow importers to mark a good after importation, but before customs release, unless such an importer has committed various infractions for country of origin marking and has been notified that goods must be marked prior to the importation.

Except in the latter case, there are no sanctions or fines for failing to comply with the marking requirements, unless the goods are removed from customs control without being marked correctly.

4. References

NAFTA Annex/Article 311; Acuerdo por el que se establecen Reglòs de Marcado de País de Origen para determinar cuando una mercancía importada a territorio nacional se puede considerar una mercancía estadounidense o canadiense de conformidad con el Tratado de Libre Comercio de América del Norte and the Resolución que establece las reglas de carácter general relativas a la aplicación de las disposiciones en materia aduanera del Tratado de Libre Comercio de América del Norte.

-
1. Materials whose country of origin is the country where the good is produced, according to the country of origin marking rules.
 2. Materials whose country of origin is not the country where the good is produced, according to the country of origin marking rules.
 3. Diverse aspects should be considered when determining the essential characteristic of a good, depending on the type of good. These would include the nature of the good or component; its volume, quantity, weight or value; the function of a component in relation to the purpose of the good, and other relevant conditions. In order to determine the country of origin of a good, only the domestic or foreign materials classified under the tariff provisions which do not allow a tariff change, according to the specific rules of the agreement, will be considered when determining which parts or materials confer on the good its essential characteristic.
 4. The inventory control system for fungible materials is as follows:
 - specific recognition system (to sort out originating fungible goods from those that are not originating);
 - first in-first out system (PEPS, in Spanish);
 - last in, first out system (UEPS, in Spanish); or
 - average system.
 5. Simple assembly is the process of joining together five or less parts of foreign origin (including screws, bolts, and others), by means of a minor process such as screwing, gluing, soldering or sewing.
 6. Minor process means:
 - the simple dilution in water or another substance which materially does not alter the characteristics of a good;
 - the cleaning process, including the removal of rust, grease, paint, or other coatings;
 - the application of preservative or decorative coatings, including lubricants, protection coating, decorative or preservative painting, or metallic coatings;
 - trimming, filing, or cutting off small amounts of excess materials;

- the loading-unloading process or any other operation necessary for the maintenance of the good;
 - the measuring, packing, repacking, baling, and rebaling;
 - the testing, marking, sorting, and classifying operations;
 - repairs and alterations, washing, laundering, or sterilizing;
 - decorative processes on textile goods, such as crimping or pinking edges, pleating, folding and rolling, fringes, trimming with cord, minor embroiderings, embossing, dyeing, stamping, and other similar processes; or
 - the decorative or finishing operations necessary for the assembly of a garment, designed with the purpose of enhancing the commercial appearance of the good or to facilitate the protection of the good, such as embroidering, stitching, sewn appliqué work, acid or stone washing, embossing and dyeing of the good, pre-shrinking, permanent pressing, attaching accessories, trimming, and other similar operations.
7. Indirect material refers to an item used in the production, testing, or inspection of a good, but not physically incorporated into the good, or an item used in the maintenance of buildings or the operation of equipment associated with the production of a good. This material includes:
- fuel and energy;
 - tools, dies, and moulds;
 - spare parts and material used in the maintenance of equipment and buildings;
 - lubricants, greases, compounding materials, and other materials used in productions, or used to operate equipment and buildings;
 - gloves, glasses, footwear, clothing, safety equipment;
 - equipment, devices, and supplies used for testing or inspection of the goods;
 - catalysts and solvents; and
 - any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production.
8. The last person who, inside the territory of the importer, receives the good in the same condition as imported. This person is not necessarily the final user.
9. Can be easily seen during the ordinary handling of the merchandise or container.
10. Can be easily read.
11. The marking must remain on the good until it reaches the final purchaser, unless intentionally removed.
12. The value of the good for the purposes of applying customs duties on an imported good.
13. Container in which the good generally reaches the final purchaser.

Annex 1: Marking seals

Official Mexican Standard NOM-Z-9-1978 establishes and describes the HECHO EN MEXICO (MADE IN MEXICO) seal which identifies all goods manufactured in Mexico.

The marking of Mexican goods must be conspicuous, legible and sufficiently permanent. If the seal cannot be placed on the goods themselves, it can be added to containers or packing materials. In addition, goods assembled or packed in Mexico can display the NOM seal. In such cases the legend contained in the seal can be modified (see emblems 4 and 5, Annex 1).

Emergency Official Mexican Standard NOM-EM-004-SCFI-1994 (published in the Diario Oficial de la Federación of June 14, 1994) establishes the specifications and procedures for use of the Contraseña Oficial (Official Countersign) and company registration number upon authorization from SECOFI. The Contraseña Oficial provides the final purchaser with the assurance that a given good meets the specifications laid down in Mexican standards (see Annex 2).



FIGURA 4



FIGURA 5

NOM No. REG.

**NOM
No. REG.**

NOM No. REG.



CONTRASEÑA DEL ORGANISMO
DE CERTIFICACION ACREDITADO

**NOM
No. REG.**



CONTRASEÑA DEL ORGANISMO
DE CERTIFICACION ACREDITADO

**HECHO
EN MEXICO**

FUTURA MEDIA

**HECHO
EN MEXICO**

GROTESCA

**HECHO
EN MEXICO**

HEVETICA MEDIA



Chapter 3: Advance Rulings

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Chapter 3: Advance Rulings

1. Introduction

In order to grant judicial security to the community of importers, exporters, and producers of the three countries, it has been agreed to establish a procedure permitting them to apply to the competent authority of the importing country for a ruling prior to the importation of a good. Rulings can relate to whether the good qualifies as originating, or to other circumstances concerning the origin or marking of the good.

2. Objective

In this chapter the objective is to explain who can request an advance ruling, the area for which an advance ruling can be issued, the requirements for the request, the process by which rulings are issued and their effects.

3. Procedures

3.1 Who can request an advance ruling?

- anyone who wishes to import a good which is being considered for an advance ruling into national territory.
- any producer in Canada or the United States who produces a good subject to an advance ruling, or any material which is used in the production of the good.
- any exporter in Canada or the United States that intends to export a good to Mexico subject to an advance ruling.

3.2 Subjects that can be considered for an advance ruling

According to article 509(1) of the treaty, an advance ruling can be used to resolve any of the following questions:

- whether materials imported from a non-Party and used in the production of a good undergo an applicable change in tariff classification, set out in Annex 401, as a result of production occurring entirely in the territory of one or more of the Parties (article 509(1)(a));

- whether a good satisfies a regional value content requirement under either the transaction value method or the net cost method set out in Chapter 4 (Rules of Origin) (article 509(1)(b));
- the appropriate method to calculate the value that the exporter or producer must apply in the territory of another Party, in order to calculate the transaction value of the good or of the materials used in the production of the good for which an advance ruling is requested. This will determine if a good fulfills the requirements for the regional value content, according to Chapter 4 (article 509(1)(c));
- the appropriate method for reasonably allocating costs, according to the allocation methods set out in the Uniform Regulations, for calculating the net cost of the good or the value of an intermediate material. This will determine if a good complies with the requirements of the regional value content according to Chapter 4, (509(1)(d));
- whether a good qualifies as an originating good under Chapter 4 (article (509)(1)(e));
- whether a good that re-enters national territory after being exported to the territory of another Party for repair or alteration qualifies for duty-free treatment in accordance with Article 307 (article (509(1)(f));
- whether the proposed or actual marking of a good satisfies country of origin marking requirements under Article 311 (article (509(1)(g));
- whether a good qualifies as originating for free tariff treatment from a Party under Annex 300-B (Textile and Apparel Goods), Annex 302.2 (Tariff Elimination), or Chapter 7 (Agriculture and Sanitary and Phytosanitary Measures) (article 509(1)(h));
- Whether a good is a qualifying good under Chapter 7 (article 509(1)(i)).

3.3 Goods for which an advance ruling may not be sought

Goods which are subject to a verification of origin, or are under review or appeal, will not be considered for an advance ruling.

3.4 Requirements for seeking an advance ruling

3.4.1 Procedural requirements

To obtain an advance ruling, the importer, exporter, or producer of a good that will be imported into Mexican territory must present a request to the Dirección General de Política de Ingresos y Asuntos Fiscales Internacionales located in Avenida Hidalgo No. 77 Módulo 4,4°. Piso Col. Guerrero C.P. 06300 México, D.F. as set forth in the Código Fiscal de la Federación.

The request must be presented in Spanish prior to the date of importation (as specified in articles 18 and 34 of the Código Fiscal de la Federación and Rules 67 and 76 of the Resolution published in the Diario Oficial de la Federación on December 30, 1993) and is to be accompanied by all necessary information and documents enabling the authorities to rule on the matter which is the subject of the advance ruling. In Annex I a suggested form is included which could be used to request an advance ruling.

In general, such requests must:

- be written in Spanish;
- indicate the name, business activity, and address of the applicant;
- indicate the name of the authority to whom it is directed and the purpose of the application, including the specific area indicated in article 509(1) of the treaty that concerns the subject of the ruling;
- indicate if necessary the address for receiving notifications and the name of the person authorized to receive them;
- point out if an application has been made or obtained for an advance ruling concerning the same good, or if the applicant knows of anyone else who has applied or obtained an advance ruling in relation to the same good;
- indicate if the good which is the subject of the advance ruling is being investigated for a verification of origin, or is under review or appeal;
- be signed by the interested party or someone legally authorized to sign on the party's behalf, unless the applicant cannot sign, in which case the applicant's thumb print will suffice. If the application is not presented by the interested party, it must be accompanied by an authorized power of attorney designating another to sign in the party's stead.
- be accompanied by all necessary information enabling the customs authorities to rule on the matter which is the subject of the advance ruling.

3.4.2 Specific Information

To provide the necessary information enabling customs authorities to issue a ruling on the matter in question, it is recommended that the following information be provided.

- When the tariff classification of a good is the subject of the advance ruling:
 - a copy of the pertinent classification ruling issued by the competent authorities in Mexico, if applicable; and
 - sufficient information to permit customs authorities to determine the tariff classification of the good, which could include:
 - the tariff classification that the applicant considers applicable and the reasons for this opinion;
 - a complete description of the good, including if necessary its composition, the description of its production process and packaging, its use, and its commercial designation in common or technical terms and accompanied when necessary by samples, catalogues, drawings or photographs.
- When an advance ruling involves application of a rule of origin that requires the determination of whether the non-original materials used in the production of the good satisfy an applicable tariff classification change:
 - a statement of all the materials used in the production of the good, indicating for each one if it is originating, non-originating, or origin unknown;
 - a description of all originating materials pointing out the basis on which they are considered as originating;
 - a complete description of all non-originating materials or unknown materials and whatever information is necessary to determine the tariff classification of these materials; and
 - a description of all operations used to produce the good, the place in which each operation was carried out and the order in which they occurred.
- When the advance ruling involves calculation of the regional value content, the applicant should include the method or methods by which he wishes the RVC to be determined.

- When the advance ruling involves use of the transaction value method:
 - the information necessary to calculate the transaction value of the good according to Annex II of the Uniform Regulations with respect to the producer's transaction, adjusted for FOB delivery;
 - the information necessary to calculate the value of each of the non-originating materials and materials of unknown origin used in the production of the good, according to section 7 and when applicable subsection 6(10) of the Uniform Regulations; and
 - a description of all originating materials used in the production of the good pointing out the reason they are considered originating.
- When the advance ruling involves use of the net cost method:
 - a statement of all product costs in the period and other relevant data for determining the total cost of the good;
 - a statement of all excluded costs that should be subtracted from the total cost of the good in order to determine the net cost of the same;
 - the information necessary to calculate the value of each of the non-originating materials and materials of unknown origin used in the production of the good, according to section 7 and, where applicable, subsection 6(10) of the Uniform Regulations;
 - the basis for the allocation of costs used in accordance with Annex VII of the Uniform Regulations; and
 - the period in which the calculation of the net cost must be applied.
- When the advance ruling involves determining whether the transaction value is acceptable or not: information enabling the authorities to determine if any of the circumstances exist which are described in Annex III of the Uniform Regulations.

3.5 Incomplete applications

When the above-mentioned requirements are not met, the authorities will notify the importer, exporter, or producer, who is allowed a period of 30 days to provide any additional documentation or information. If the information is not forthcoming in this period of grace, the application will be considered withdrawn.

3.6 Deadline for issuing advance rulings

The authorities must issue an advance ruling within 120 days from the date that all the required information to answer the application was presented. When the applicant must comply with other requirements or provide necessary details for a ruling, the term will begin on the date that all the requirements are completed.

If the period of 120 days elapses without a ruling, the authorities are deemed to have denied the application and the interested party may begin the process of review and appeal.

3.7 Date from which an advance ruling takes effect

An advance ruling comes into effect on the date of issue, or on a previous date if indicated in the ruling.

3.8 Modification or revocation of an advance ruling

3.8.1 Applicable cases

- An advance ruling can be modified or revoked in the following cases:
 - if the ruling is based on an error of fact;
 - if the ruling is based on an incorrect tariff classification;
 - if there is an error in calculating a regional value content according to Chapter 4, "Rules of Origin";
 - if there is an error in applying the rules to determine whether a good qualifies as originating according to Annex 300-B, Annex 302.2 or Chapter 7;
 - if there is an error in applying the rules for determining whether a good is a qualified product under Chapter 7;
 - if there is an error in the application of the rules which determine if a good which returns to a territory after being exported from its territory to that of another Party for repair or alteration, qualifies to receive free tariff treatment according to article 307;
- When the rule does not agree with an interpretation made by the Parties with respect to Chapter 3, "National Treatment and Market Access for Goods", or with Chapter 4, "Rules of Origin"; or

- When there is a change of circumstances, or in the grounds on which an advanced ruling is based.

3.8.2 Effective date of a modification or cancellation of an advance ruling

The moment when an advance ruling is modified or revoked shall be the date on which the modification or revocation is issued, or at a later date stated therein. It shall not be applied to importations of a good that have occurred prior to that date, unless the person has not acted in accordance with its terms and conditions.

3.9 Appeal of an advance ruling or the modification or revocation of an advance ruling

Advance rulings, or the modification or revocation of advance rulings, are subject to the following appeals:

- the appeal procedure provided in title 5 of the Código Fiscal de la Federación. This remedy must be exhausted before a petition for reversal can be filed with the Tribunal Fiscal de la Federación;
- a petition for reversal as provided in title 6 of the Código Fiscal de la Federación.

Note: Please see Chapter 7, "Review and Appeal".

3.10 Confidentiality

Under article 507 of the treaty and article 69 of the Código Fiscal de la Federación, authorities are required to maintain the confidentiality of business information provided for purposes of advance rulings, and must protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Such confidential business information can only be disclosed to those authorities responsible for determinations of origin, and the administration and enforcement of customs and revenue matters.

4. References

The rules which are used to regulate the issuance of advance rulings are to be found in article 509 of the treaty and in the rules 67 and 76 of the Resolution published in the Diario Oficial de la Federación of December 30, 1993, as well as in the Código Fiscal de la Federación and the *Ley Aduanera*.

Annex 1: Example of an application for an advance ruling

(Translation)

SMITH Company

Lic. Mario López González
Director of International Legal Procedures
Dirección General de Política
de Ingresos y Asuntos Fiscales Internacionales
Av. Hidalgo, No. 77, Módulo 4, 4° Piso,
Col. Guerrero, C.P. 06300
Mexico, D.F.

Dear Sir:

John A. Smith, as legal representative of the firm Smith Company of which I am the owner, as attested in public register number 12,344 of February 10, 1993, as witnessed by Jack Jones, notary public number 1001 in the city of Minneapolis, Minnesota, U.S.A., legalized before the Mexican Consulate of the same city and officially recognized to receive communications at the house marked with number 100 in Summit Street, Minneapolis, Minnesota, Zip Code 56000, as indicated in article 509(1)(e) of the North American Free Trade Agreement, request from you the issuance of an advance ruling for a good described below in order to determine if said good is originating according to NAFTA rules of origin.

The firm that I represent produces leather bags. The tariff classification for these bags is 42.02.11.01 under the Tarifa de la *Ley del Impuesto General de Importación Mexicana* (Harmonized Tariff System) according to the information enclosed.

All the materials which are used in the production of the leather bags are originating in the North American region because all were acquired in Mexico or the United States, and the producers of these materials have provided a list and a certificate of origin for each one of them, for which I am enclosing a copy.

I declare that the above contains only truthful information and that I have never before applied for an advance ruling for these goods and that the goods in question are not subject to a verification of origin or a review or appeal determination.

Yours faithfully,

John A. Smith

Chapter 4: Entry

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Chapter 4: Entry

1. Introduction

Foreign trade operations are carried out by means of an entry form which must be used in order to move merchandise through customs procedures. These procedures have to fulfill certain formalities established in the customs legislation, including the presentation of the necessary documents for entry and exit of merchandise, and the people legally recognized to promote customs procedures, among others.

2. Purpose

This chapter informs interested persons of the procedure that should be carried out to import or export merchandise, from its arrival at customs through its departure.

3. Procedure

3.1 People legally recognized to clear goods through customs

According to the *Ley Aduanera*, everyone who imports or exports merchandise into national territory, is obligated to follow certain instructions, whether they are proprietors, owners, designators, addressees, appointees, customs agents, or anyone who has intervened in the introduction, departure, custody, storage, and handling of the merchandise (article number 1, second paragraph).

The agents or customs representatives act as legal representatives of importers and exporters in all actions and notifications that are derived from customs procedures (article 26-A of the *Ley Aduanera*).

Customs agents are solely responsible for paying foreign trade taxes and other contributions, as well as the countervailing duties that occur as a result of the introduction of merchandise into national territory, in those customs entries where they intervene personally or by means of their authorized employees (article 41 of the *Ley Aduanera*).

Customs clearance is the set of acts and formalities, relative to the entry and departure of goods to and from national territory, that according to different movements and customs authorities must be carried out in customs by fiscal authorities and the receivers or designators for imports, and the addressees for exports, as well as the agents or customs representatives where applicable (article 5 of the *Ley Aduanera*).

Only the following are legally recognized to clear goods through customs:

- customs agents appointed to the relevant customs office;
- the person or company that acts by means of a customs representative; or
- agents or customs representatives authorized to act in customs offices other than their local office.

As an exception to the above, individuals distinct from the agents or customs representatives, can promote customs entry only and exclusively in the following cases.

Passengers arriving from international trips can personally clear additional goods not included in their luggage according to the terms described in articles 28 and 60(2) of the *Ley Aduanera*. This merchandise, excluding allowances, cannot exceed the equivalent in national currency of US \$1,000, and the merchandise must be found in the list which appears in rule 41 of the "Resolución que establece para 1994 Reglas Fiscales de Carácter General relacionadas con el Comercio Exterior", published in the Diario Oficial de la Federación on March 28, 1994.

Additionally, computer equipment can be imported, without using the services of the customs agent or representative, provided that the resulting value of the merchandise added to that described in the above paragraph does not exceed US \$4,000 or its equivalent in foreign currencies.

Passengers who opt to pay the corresponding duties according to the rules here established, should apply to the value of the goods, minus the allowance to which they are permitted, a global tariff of 20.8%, provided that the goods do not show trademarks, labels, or tags that indicate that they are originating from countries outside of NAFTA. This payment should be made by means of the customs declaration for passengers.

Imports made through the postal service should only be conducted by customs agents or their representatives, when the interested party asks for an estimate of the taxes. In other cases the taxes will be decided by customs authorities (article 60). Also, in those cases referred to in article 76(2) of the *Ley Aduanera*, an entry form is not required, nor is it necessary to use the services of the customs agent or representative. However, the official form for general fiscal rules published by the Treasury Department should be presented.

3.2 Procedures for the importation of goods

3.2.1 Documentation

According to article 25 of the *Ley Aduanera*, those who import or export merchandise are obligated to present a customs official entry form approved by the Secretaría de Hacienda y Crédito Público.

Customs agents, once they have collected the necessary documentation, should fill out the import entry form according to the instructions published in Annex 20 of the Resolution published in the *Diario Oficial de la Federación* on March 29, 1994.

The entry form must contain the references to the customs authorities to which the goods are directed, and necessary information to determine the foreign trade tariff payment and the countervailing duties where applicable.

For such conditions the customs agents can inspect the merchandise to ensure that the information presented in the entry form is correct.

The following documents should be presented along with the entry form:

- the commercial invoice that refers to the imported merchandise when the customs value of the goods is determined according to the transactional value, and the value of such goods is greater than US \$300 or its equivalent in other foreign currencies;
- the bill of lading for maritime traffic or for air transport, both validated by the transporting company;
- the certificate of origin when the origin of the goods must be established when their value exceeds US \$1,000;
- documents in which the guarantee declares a value less than the estimated price established by the Treasury Department;
- documents that prove compliance with non-tariff requirements in terms of restrictions or regulations for imports where applicable.

The non-tariff restrictions and regulations are exclusively those established according to the Secretary of Commerce and Industrial Development, or where applicable together with other competent federal executive dependencies, and where published in the *Diario oficial de la Federación*, and identified in terms of the tariff item and description that corresponds to the *Tarifa de la Ley del Impuesto General de Importación*.

When the importation of any merchandise is subject to a permit from the Secretaría de Comercio y Fomento Industrial, it will be necessary to fulfill all the directions that are established by the dependence in the respective permit. This includes the authorized customs agent, who will process the permit, the country of origin of the merchandise, and the characteristics of the same.

3.2.2 Contributions that are assessed for imports

- general tax for importation;
- value added tax (IVA);
- tax on new cars (ISAN);
- special tax on production and services (IESPS); and
- customs fees (DTA).

The general tax for importation, except for that mentioned in the Tarifa de la *Ley del Impuesto General de Importación* or in the *Ley Aduanera*, can be calculated in two ways: according to the dutiable value of the merchandise that will be imported, applying the tariff rate that corresponds to the classification of the merchandise, (according to the rate given or in the Tabla de Desgravación de Mexico, following NAFTA) or the value that corresponds in terms of articles 48 through 55 E of the *Ley Aduanera*.

The value added tax is assessed on importation and is determined by applying a rate of 10%, where the value is not considered at a zero rate, as in those cases that are included in article 25 of the *Ley del Valor Agregado*. In the case of tangible imported goods, the value that is used for general tax purposes will be considered, adding to the sum of the latter tax, and others that have to be paid on some imports including, where applicable, the countervailing duties. (article 27 of the value added tax).

The tax on new cars is assessed on the importation of new cars, and is determined by the value that is considered for the purposes of the Impuesto General de Importación, adding the sum of the before-mentioned tax and other taxes that have to be paid on imports, with the exception of the value added tax.

The special duty on production and services is assessed with the idea of taxing certain goods, and will be applied at the following rate:

- 22% for beer or beverages with an alcohol content up to 6° GL;
- 21.5% for alcoholic beverages with an alcohol content up to 13.5° GL;
- 30% for alcoholic beverages with an alcohol content between 13.5° GL and 20° GL;
- 44.5% for alcohol, brandy and alcoholic beverages not contained in the three points above, as well as for their concentrates;
- 139.3% for cigars;
- 20.9% for popular cigars without filters, made with dark tobacco and measuring 77 mm long, and whose price to the public on the 1st of January of each year does not exceed the price established by the Mexican Congress, as well as cigars, pure tobacco, and ground tobacco;

- for gasoline or diesel, the rate will be established according to the type of gasoline in question; and
- 60% for natural gas for automotive consumption.

Customs fees are calculated at the fixed rate of .0008% on the value of the merchandise that will be imported, and are assessed for any kind of customs operation (article 49 of the *Ley Federal de Derechos*).

Countervailing duties are assessed on the importation of merchandise which has been imported under conditions of price discrimination or through price subsidies in the country of origin, according to the rules established in the *Ley de Comercio Exterior*.

3.3 Description of general procedure

Customs agents fill out the customs entry form and determine the taxes, having all the necessary documentation for this operation, and then proceed to pay such taxes at the bank module located in customs.

Once the taxes and other fees have been paid, the merchandise is presented with the customs entry form at the random selection module where the mechanism which determines whether or not a customs inspection must be made will be activated.

In no case will the mechanism of the random selection be activated if the merchandise declared in the customs form is not found in the fiscal zone, except in the case of owner's premises clearance.

When the random selection mechanism determines "free passage", the merchandise will be cleared immediately with no customs inspection and driven away from the fiscal zone, thus concluding the operation.

If an inspection is required, customs authorities will carry it out in front of the person who has presented the merchandise, and will check the documentation and verify the exactness of the information presented before the merchandise leaves the customs premise.

Once the customs inspection has been carried out and no irregularities found, another mechanism of random selection will be activated by the person who presented the merchandise, to determine if it will be subject to a second inspection.

In case of irregularities during the first inspection, the agent or representative can request a second inspection of the merchandise.

If as a result of activating the random selection mechanism for the second time, it is determined that a second inspection of the merchandise is not required, the goods are immediately cleared. If an inspection is required, it will be carried out by private inspectors authorized by the Treasury Department.

The first and second customs inspections consist of documentary review and physical examination of imported or exported goods, such as samples, in order to cover all the details which support the declared statement, e.g. units of measurement, number of articles, volume, description, nature, state, and other data that characterize the merchandise, and permit its identification.

The customs authorities, on request of the interested party, can authorize customs inspection and other services to be carried out in locations outside the customs area by its personnel (*despacho a domicilio*). According to the Resolution that establishes "Reglas Fiscales de Carácter General for 1994 related to the Comercio Exterior", published in the *Diario Oficial de la Federación* on March 28, 1994, customs can offer inspection services outside the customs precinct when the fiscal areas destined for such use are insufficient to serve the public, as long as these are not carried out on private property.

As an exception to the above, the same Resolution establishes that samples for customs inspection can be taken at the importer's address in the case of sterile, radioactive, or dangerous merchandise, or when special equipment or installations are required.

3.3.1 Procedure for road traffic

This procedure is the same as the general procedure described in section 3.3., except that on payment of the corresponding taxes, three days are allowed for presentation of the merchandise at the random selection module for the first inspection when the merchandise is transported in road vehicles, and twenty days if transported by train (article 58(2) of the *Ley Aduanera*).

3.3.2 Procedure for sea traffic

Sea traffic involves large-volume merchandise, mainly in bulk form. Customs clearance is therefore carried out with a single entry which covers all similar merchandise carried in the ship. Payment of taxes is made before final unloading of the merchandise, since entry annexes are used for partial unloading (Parte II), according to progress in the unloading of the ship (Rule 34 of fiscal matters).

3.3.3 Procedure for air traffic

This procedure is the same as the general one, except that the airlines which introduce the goods must unload them directly from the plane on their own transport which will be driven along the fiscal route, under their own responsibility, to the customs entrance, where they will be registered and assigned to the corresponding fiscal precinct.

3.3.4 Procedure for goods in transit

In this procedure, the customs agent must fill out a special customs transit form, as well as a "valuation form" which guarantees that the merchandise will get to its final destination, and submit a notice of transit to customs.

In order to carry out operations under this system, registration on a transit list controlled by the Administración General de Auditoría Fiscal Federal is required.

The transit of merchandise must be carried out within maximum periods set out by the Secretaría de Hacienda y Crédito Público, according to the General Rules.

3.3.5 Procedure for postal traffic

When goods are cleared through the postal service, it is important to note that the parties concerned do not intervene directly in the operation, since the merchandise remains under the control of the postal service and the vigilance of the customs authority, which determines the taxes on presentation of the merchandise by the postal employees, including the countervailing duties. At that time, payment will be made within five working days following notification of the ruling, provided that the value of the goods does not exceed US \$1,000 or its equivalent in national or foreign currency, in which case the interested party should retain the services of a customs agent.

3.4 Sampling

When merchandise which is difficult to identify is being introduced into the country, such as chemicals, textiles, leather finishings, or treated paper, it is necessary to take samples of these goods. This is a free service carried out by specialized personnel from the Unidad de Asesoría Técnica y Muestreo, assigned to the relevant customs offices.

4. Irregularities

There are two kinds of irregularities, minor and serious. Minor irregularities are those which do not give rise to attachment of the merchandise. Serious irregularities result in attachment, as seen in the following situations.

4.1 First inspection ruling

At the time of inspection, a ruling must be drawn up which includes all data that permits identification of the merchandise, relating it to its customs entry form. Also, in the case of detection of an irregularity which does not result in attachment of the merchandise, a statement will be made which lists the acts or omissions observed, in which the taxes and countervailing duties will be decided, applying the corresponding fines on a temporary basis.

4.2 Tariff disputes

When a tariff classification dispute occurs, the administrator will call a meeting of the "technical advisory group", which will consist of the administrator (as chairperson), a customs inspection officer, the customs agent involved in the inspection, a representative of the Association of Customs Agents for the region, and the department head for legal affairs in customs. The objective of the meeting will be to come to an agreement in the matter. If no agreement is reached, the administrator will make a provisional decision.

4.3 Administrative procedures for sanctions in customs matters

This procedure takes place when merchandise is attached following the first or second customs inspection, verification of the merchandise in transit, or by means of checking the documents and the goods.

According to customs law, merchandise will be attached when:

- it is introduced into the national territory at an unauthorized point;
- it is prohibited or subject to non-tariff restrictions or regulations which have not been met;
- the customs documentation is unacceptable in terms of required procedures for its introduction into national territory. For passengers, only undeclared goods will be attached;
- according to the first or second inspection, or verification of the means of transport, the volume of goods exceeds the amount declared on the customs entry form by more than 10%, provided that transport is by road; or
- cargo vehicles bring imported goods into the fiscal precinct without the corresponding customs entry form for clearance.

The attachment of merchandise can be substituted by guarantees which are established by the Secretaría de Hacienda y Crédito Público.

4.4 Resolution

Once the official document to initiate administrative procedures in customs matters is produced, the interested party has 10 days to present evidence and pleas. If the legal status of the goods in the country is so established, customs will immediately instate a provisional ruling ordering the liberation of the attached goods.

5. Imports under preferential tariff treatment

The procedures to import into Mexico under NAFTA are the same as those applied to all imports and exports. Changes can be seen only in the applicable tariffs, and all goods imported under preferential tariff treatment must be classified as regional goods and comply with origin certification requirements.

5.1 Annexes to the Tarifa de la *Ley del Impuesto General de Importación*

When NAFTA came into effect, an appendix was published to the Tarifa de la *Ley del Impuesto General de Importación*, which is the tariff exclusively for NAFTA, published on December 28, 1993, in the Diario Oficial de la Federación.

5.2 Certificate of origin

The certification of origin is closely related to the rules of origin, which can be defined as the set of requirements that products must fulfill in order to be considered as originating in a certain country.

Proof that goods originate from a region is in the form of a certificate of origin, which is a standard document used by the three countries that can be filled out in any of the three languages, and is valid for a 4-year term after signing.

A copy of the certificate is sufficient to request preferential tariff treatment under NAFTA.

This document can be signed by the producer or the exporter.

5.3 Quotas

When NAFTA came into effect, a quota certificate for certain imports was established, which is used to control the quotas established under NAFTA. The term quota means that a certain quantity of goods may enter tax-free for a certain period of time set out on the certificate.

These documents are issued by the Secretaría de Comercio y Fomento Industrial, on special paper, and are granted only to authorized companies.

5.4 Certificate of origin for farm products

As a general rule, and in accordance with article 25 of the *Ley Aduanera*, the certificate of origin must not be annexed to the customs entry form, with the single exception of certain agricultural products imported under NAFTA, which must be accompanied by a certificate of origin.

Agricultural products include Chapters 1 through 24 according to the Harmonized System (except fish and fish products).

5.5 Tax quotas

Under NAFTA, a tax quota is the mechanism established for the application of a certain tariff rate for the importation of a particular product up to a determined quantity (amount within the quota), and a different rate for imports of the same product that exceed the limit.

Tax quotas for agricultural products are set out in the Agreement.

5.6 Seasonal tariffs

These variable tariffs were established in the Agreement. The applicable preferential tariff rate will vary depending on the date of importation.

These tariffs are applied to the merchandise that is listed in tariff classifications mentioned in Appendix A of the *Tarifa de la Ley del Impuesto de la Ley General de Importación*, related to NAFTA, under the code ES.

5.7 Special safeguards

Special safeguards in the form of tariff quotas are applied to agricultural products with the aim of protecting this sector, since there are recognized and significant differences among the three countries.

5.8 Other safeguards

These conditions can be adopted by NAFTA member countries as an emergency measure to avoid imports from a member that, taken alone, represent a substantial part of total imports, and as such contribute in an important way to serious damage and threat caused by such imports. In this situation the question of whether the imports come from several countries will also be considered.

To apply the above, it is necessary to follow the conditions established in the treaty, and according to a procedure also established, the country or countries that apply the measure should notify the others so that they can investigate the situation at their proper convenience.

6. References

Ley Aduanera

"Resolución que establece, para 1994, Reglas Fiscales de Carácter General, relacionadas con el Comercio Exterior"

Tarifa de la Ley del Impuesto General de Importación y su Apéndice

Ley del Impuesto al Valor Agregado

Ley del Impuesto sobre Automóviles Nuevos

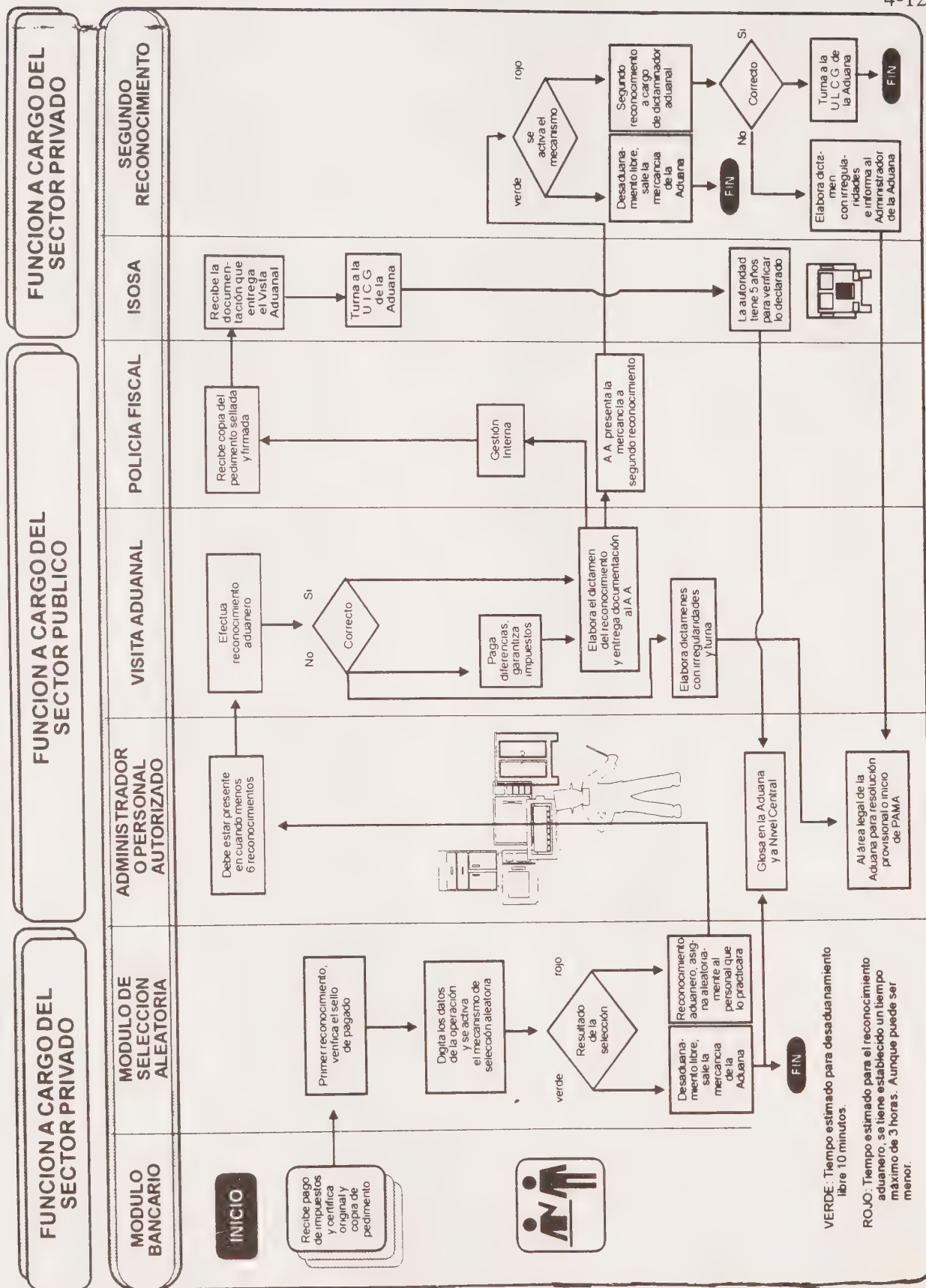
Ley del Impuesto especial sobre Producción y Servicios

Ley Federal de Derechos

Tratado de Libre Comercio de América del Norte

PROCESAMIENTO PARA IMPORTACION DEFINITIVA

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Chapter 5: Post Importation Claims and Corrections

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Chapter 5: Post Importation Claims and Corrections

1. Introduction

In order to carry out the commitments established in NAFTA, importers have been faced with the necessity of recouping the taxes paid for foreign trade for cases where they wished to claim preferential tariff treatment for goods being imported, and such treatment was not granted at that time.

2. Objective

This chapter explains the requirements as well as the procedures needed to obtain repayment of taxes paid in excess once the goods have been granted preferential tariff treatment.

3. Procedure

According to article 502(3) of NAFTA, importers who could have requested preferential tariff treatment and did not obtain it at the time of importation because they did not have the corresponding certificate of origin or for any other reason, can apply within a period of one year, counted from the date of the importation, for the repayment of taxes paid in excess, from the relevant Administración Especial o Local de Recaudación by means of Form 32 (Annex I) and with the following accompanying documentation:

- a written statement declaring that the good qualified as originating at the time of importation;
- a copy of the certificate of origin;
- the entry document; and
- a copy of the adjusted entry document.

When the adjusted importation documents are considered, as permitted in article 62 of the *Ley Aduanera*, and this establishes a balance in favor of the importer, repayment or accreditation of the taxes paid in excess can be requested, provided that the above requirements are met.

4. References

Código Fiscal de la Federación, article 22, Rules for Reimbursement

North American Free Trade Agreement, Chapter 5 (article 502 (3)), published in the Diario Oficial de la Federación 20 December 1993

Ley Aduanera, article 62

Chapter 6: Origin Verification and Determination

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Chapter 6: Origin Verification and Determination

1. Introduction

In article 506 of NAFTA, the United States and Canada agreed to give Mexican officials the right to examine the books and records of U.S. and Canadian exporters and producers to verify the origin of goods. This is to determine whether goods imported into Mexico under the preferential tariff treatment and supported by a certificate of origin qualify as originating under NAFTA (Chapter 4).

2. Purpose

This chapter explains in simple terms the process and significance of an origin verification.

3. Procedures

Before initiating an origin verification, the importer shall submit to the Secretaría de Hacienda y Crédito Público (SHCP) a copy of the certificate of origin used to request preferential tariff treatment.

The SHCP will then request additional information to that stated in the certificate of origin to verify the validity of information supplied on the certificate, using the following means:

- questionnaires or verification letters submitted to the exporter or producer of the good, or any other method used by the customs authorities to request additional information on the good being verified; or
- verification visits to, and audits of, the exporter or producer of the good, to inspect the premises used to produce the good and to examine the relevant accounting records.

3.1 Written questionnaires and verification letters

By means of a written questionnaire or verification letter, the SHCP may request information from the exporter or producer of the good imported into national territory, provided that the corresponding good is specifically mentioned. It may also request declarations, reports, and other documents that permit verification of the origin of the good.

In addition, any information voluntarily provided to the importer by the exporter or producer and submitted by the importer to the SHCP will be helpful in determining the origin of the good. Failure to supply this information will not necessarily result in preferential tariff treatment being denied.

The questionnaire or verification letter should be sent by the SHCP to the exporter or producer using certified mail with proof of receipt, or using any other means even if it doesn't provide proof of receipt.

There are five types of questionnaires which the SHCP may send to exporters or producers in the U.S. or Canada:

- questionnaire for goods wholly obtained or produced in the territory of a NAFTA country or countries;
- questionnaire for goods wholly obtained or produced from originating materials in the territory of a NAFTA country or countries;
- questionnaire for goods produced from non-originating materials which are subject to a tariff classification change under NAFTA (Annex 401);
- questionnaire for goods with a regional value content calculated using the transaction value method; and
- questionnaire for goods with a regional value content calculated using the net cost method, and for goods which must satisfy this requirement under article 402.5 of NAFTA.

In addition, the Secretaría de Hacienda may also send a questionnaire asking general questions on the company's structure, organization, administration, and performance, as well as specific technical information about the origin of the exported good not provided on the previous documents.

Where Canadian or U.S. customs authorities so require, and 30 calendar days have passed since a questionnaire or verification letter was mailed to an exporter or producer of these countries by a method which does not permit confirmation of receipt and the SHCP has not received the information requested, the SHCP will send a second questionnaire or verification letter using a method with proof of receipt, where it is possible to attach a written statement which indicates whether the good is qualified as originating or not.

In addition, this statement will advise that the SHCP intends to deny NAFTA preferential treatment if the exporter or producer fails to provide the information required within a second 30 day period.

3.2 Verification visits and audits

The SHCP must notify the exporter or producer in writing of its intention to conduct a verification visit or audit, using certified mail or another service with confirmation of receipt.

The following information shall be included in the written notice issued by the SHCP:

- the identity of the customs authority issuing the notice;
- the name of the exporter or producer whose premises are to be visited;
- the date and location of the verification visit or audit;
- the purpose and scope of the verification visit or audit, indicating the specific good or goods to be verified;
- the names and official posts of the personnel in charge of the verification visit or audit; and
- the legal basis of the verification visit and audit,

Verification visits are carried out when:

- goods have been obtained or produced entirely in the territory of a NAFTA country or countries;
- goods have been wholly produced from materials of a NAFTA country or countries; or
- the specific origin rule that applies to the goods is based entirely on a tariff classification change.

Audits are conducted when a detailed examination of the following is considered necessary:

- all records pertaining to the origin of the good, including purchase, costs, payments, and value of the good;
- all components and materials used in the production of the good, as well as the inventory management control system; or
- the manufacturing process of the good to the point at which it is ready for export to Mexico from a territory of a NAFTA country.

The exporter or producer is entitled to have two observers present during a verification visit or audit. These observers are to be identified to the SHCP, and can act only as observers. The verification visit or audit will not be delayed if the observers are not present.

A verification visit or audit may be postponed for up to 60 days upon the written request of U.S. or Canadian customs authorities. Such a request should be submitted to the SHCP within 15 days following the day after the date the notification is received.

Delay of a verification visit does not mean that the good is to be considered as originating.

3.3 General information

In addition, the SHCP may verify the following:

- the tariff that is applicable to an originating good under NAFTA Annex 302.2, which establishes the tariff rate reduction; or
- in the case of an agricultural good, a determination of whether it is a qualifying good, according to NAFTA Annex 703.2.

3.4 Rulings issued after verification visits

The SHCP will provide the exporter or producer with a written statement confirming whether the good is qualified as originating or non-originating, including the findings and legal basis.

When the SHCP denies preferential tariff treatment following origin verification, a notice will be sent to the exporter or producer of the good who, in turn, shall notify all parties who received a certificate of origin of the result.

3.5 Exemptions for origin verification

When the producer decides to calculate the regional value content through the net cost method, the SHCP may not verify such estimates until the fiscal period for which the net cost method has been chosen has elapsed.

If the producer's books and records fail to satisfy the Generally Accepted Accounting Principles in the producer's country, the SHCP will allow the producer a 60-day period after the verification visit or audit date of notification to produce a record of costs according to those principles.

3.6 Denial or suspension of preferential treatment

The SHCP will deny preferential treatment in cases where:

- the exporter, producer or importer fails to keep the relevant books and records needed for an origin determination of the good;
- the customs officers or auditors are denied access to the importer, producer, or exporter's accounting books and records;
- the producer or exporter fails to respond to a questionnaire, verification letter or request for information within 30 days of receiving notification; or
- the producer or exporter does not consent to a verification visit or audit within 30 days of receiving notification.

If the verification visit discloses that a U.S. or Canadian producer or exporter has repeatedly submitted false and non-substantiated declarations concerning a good exported to Mexico as an originating good, the SHCP will suspend preferential treatment for all identical goods produced or exported to Mexico by that exporter or producer, unless that person provides evidence to the contrary.

Preferential tariff treatment will be denied when the exporter or producer does not respond to a secondary questionnaire or verification letter within 30 days of receiving such documents.

4. References

Diario Oficial de la Federación, dated December 20, 1993 (Chapter 5, articles 506, 511, and 514, NAFTA).

Diario Oficial de la Federación, dated December 30, 1994, Reglas 35-66, Sección VII, Título III of the Resolución which outlines the application of NAFTA provisions in customs matters.

Ley Aduanera (art. 3 last paragraph).

Chapter 7: Review and Appeal

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Chapter 7: Review and Appeal

1. Introduction

Articles 510, 1804, and 1805 of NAFTA extend the same right to U.S. and Canadian exporters or producers as to Mexican citizens to request reviews of, and appeals to, final rulings issued by Mexican, U.S. or Canadian customs.

2. Purpose

This chapter describes the procedures to request a review of, or to appeal a ruling from customs authorities under NAFTA.

3. Procedures

3.1 Types of determinations subject to review and appeal:

- a ruling derived from an origin verification as a result of an origin determination denying preferential tariff treatment for a good, once the producer or exporter, who filled out and signed the corresponding certificate of origin has been notified (article 506);
- a ruling based on country of origin marking, in which the customs authority determines that the marking does not comply with the applicable origin marking rules of the NAFTA Party in question to be considered a Mexican, U.S. or Canadian good; or
- a ruling derived from an advance ruling determination submitted to a customs office by an importer, producer, or exporter, in accordance with NAFTA provisions (article 509).

3.2 Eligible persons

The following are entitled to request a review or appeal:

When a ruling is issued by Mexican customs:

- U.S. or Canadian producers or exporters, concerning:
 - a determination based on an origin verification;
 - a determination based on country of origin marking; or
 - an advance ruling determination.
- Mexican importers, concerning:
 - an advance ruling determination.

When a determination is issued by U.S. or Canadian customs:

- Mexican producers or exporters, concerning:
 - a determination based on an origin verification;
 - a determination based on a country of origin marking; or
 - an advance ruling determination.

3.3 Procedure to request a review or appeal from Mexican customs

The Código Fiscal de la Federación (CFF) provides the legal basis for requesting reviews and appeals from Mexican customs (Títulos V and VI, Código Fiscal de la Federación).

- In the first instance, the exporter or producer shall file a request for review (according to CFF, Título V).
- In the second instance, the exporter or producer is entitled to file a petition for reversal with the Tribunal Fiscal de la Federación.

Note: According to the *Ley Aduanera* (art. 142), the petition for reversal shall be filed with the Tribunal Fiscal de la Federación once the first instance has been exhausted.

3.3.1 First instance (review)

Procedures:

- Submit a written statement to the relevant customs office requesting a review. This may be done by hand or by mail, using a method of confirmation of receipt, no later than 45 days after the date the determination was received, beginning one working day after the ruling came into effect (article 121 of the CFF).

- A review request statement shall (article 18 and 122):
 - be signed by the applicant or legally authorized representative;
 - be in writing;
 - include the full name, business name, and address of the claimant for tax purposes;
 - specify the authority which has received the request, as well as the purpose for such a request;
 - indicate, when applicable, the address for receiving information, and the name of the authorized representative (e.g. address of legal advisor's office);
 - indicate the corresponding ruling, specifying letter number, date of issue, and contents;
 - indicate the prejudice caused by the determination to the claimant;
 - supply the evidence deemed necessary; and
 - list the reasons for the appeal.
- Other supporting documents to be supplied. (article 123):
 - ID papers of the representative acting in the name of the claimant or corporation;
 - a written statement of determination (the basis for the appeal);
 - proof of notification (a document stating that the party concerned received the determination); and
 - documentary evidence and expert ruling, if applicable.

The corresponding authority shall issue a determination and publish the results no later than 4 months after the date on which the request for review was filed.

3.3.2 Second instance (request for reversal to the Tribunal Fiscal de la Federación)

When the claimant does not agree with the redetermination issued by the authorities, a petition for reversal may be filed with the tribunal.

Procedures

- The claimant shall submit by registered mail or in person a first-suit statement signed before the competent tribunal, according to the location of the appealed authority, no later than 45 days after the date on which the redetermination took effect (article 207).

- The petition must include the following information (article 208):
 - the name, address and, if applicable, the fiscal number of the claimant and address for receiving information (e.g. the address of the legal advisor's office);
 - the review statement issued by the authority, stating the number of the resolution, date of issue, and contents;
 - the name of the authority being appealed;
 - the reasons for the petition for reversal;
 - other relevant proof; and
 - the damages caused by the determination to the claimant.
- Additional supporting documentation to be supplied (article 209):
 - a copy of the legal statement for each party to the judgement and a copy of the additional documentation attached;
 - the papers which accredit the legal status of the person acting on behalf of the claimant, or a statement issued by the appealed authority recognizing this right, or a description of the contents of such a document which recognizes the representative as acting in the name of the claimant;
 - a copy of the ruling being appealed or, when applicable, a copy of the lack of agreement (article 37);
 - the proof of receipt, when applicable, of the ruling being appealed; and
 - other documentary proof considered necessary.

4. Extending the period for appeal

The following cases may be considered for an extension of the appeal process of up to 45 days after receipt of the ruling being appealed:

- the issuing of a non-agreement is being appealed (article 37);
- the first determination is being appealed; or
- non-notification or illegal notification.

The claimant shall describe the information contained in section 2 above, and attach a copy of the documents indicated in section 3, except those already provided along with the original appeal statement.

Note: Shared requirements for first and second instances

- The representation of individuals before the fiscal authorities will be by means of a notarized letter, or letter of attorney signed in the presence of two witnesses whose signatures shall be ratified before the fiscal authorities or a public notary (article 19).
- When people do not present their own cases, an attorney at law shall represent them.

Note: The parties to an appeal before the Tribunal Fiscal de la Federación are (article 198):

- the claimant;
- the defendants; and
- the administrative official of the Administración Pública Federal, Procuraduría General de la República, or Secretaría de Hacienda y Crédito Público.

5. References

The basis for requesting a review or filing an appeal of a final ruling issued by customs authorities is article 510 of NAFTA and Section IX, Rules 77-80 of the Resolution establishing general rules for the application of NAFTA in customs matters, published in the Diario Oficial de la Federación on 30 December 1993.

Diario Oficial de la Federación, dated January 7, 1994, which outlines the country of origin marking rules applicable in Mexico.

Chapter 8: Drawback and Duty Deferral

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Chapter 8: Drawback and Duty Deferral

1. Introduction

To ensure compliance with NAFTA, member countries are subject to various restrictions in the application of drawback and relief or reduction of duties based on the importation of goods. This chapter details the scope of such programs, including examples for each case. The rulings for the return or drawback of duties under NAFTA will come into effect as of January 1, 2001.

2. Purpose

This chapter describes the restrictions the NAFTA Parties face when applying the drawback and relief of duty programs, concerning the reduction or exemption of duties on importation, based on the applicable legal principles.

3. Procedure

According to article 303(1) of NAFTA, the Parties can only return duties or exempt importers from the payment of duties in the following cases:

- the good is to be exported later to the territory of another Party;
- the good is to be used as material in the production of another good which is later exported to the territory of another Party; or
- the good is replaced by an identical or similar good used as a material in the production of another good which is later exported to the territory of another Party.

Example

Bolts imported into Mexico from Spain for the manufacture of machinery to be exported to the United States.

Imports from a NAFTA country are also covered:

Example

Merchandise exported to Mexico from Canada and forwarded to the United States.

The restrictions applicable under article 303(1) of NAFTA refer to the amount of the refund, which must not exceed the lesser of the following:

- the amount of duty paid or payable upon importation of the good into the first NAFTA country, from which the good will be exported to another Party; or
- the amount of duty paid or payable upon importation of the good into a second NAFTA country, namely, the final importer of the good.

Example

A Mexican importer claims duty drawback of the duties paid on metal fittings for handbags imported into Mexico from Italy. The amount of duties paid for such metal fittings equals N\$ 1 000 pesos. When the finished handbags are exported to the U.S., the amount paid is equal to N\$ 500 pesos. The amount of the refund will be N\$ 500 pesos, which is the lesser of the two amounts.

Article 303(2) prevents NAFTA countries from refunding, waiving, or reducing payment of the following duties:

- countervailing duties imposed to avoid unfair international trade practices;
- premiums collected as participation fees in contests or bids originating from the application of quantitative measures for the importation of goods;
- special fees provided under Chapter 7 of NAFTA concerning agricultural goods and sanitary and phytosanitary measures, which are applied only to the U.S.; and
- customs tariffs paid or payable upon importation of a good which is subsequently not exported to a NAFTA country, but is used as an identical or similar good replacing another one being exported to a member country.

NAFTA provisions allow, under article 303.3, the participating countries to reduce or eliminate customs tariffs on imported goods under a program for duty waivers on goods subsequently exported to the territory of another Party. These goods can also be substituted for a similar or identical good, or used as material in the production, manufacturing, or repair of a good later exported to the territory of another NAFTA Party.

Under no circumstances will the reduction exceed the lesser of the following amounts:

- the total duties paid upon final importation; or
- the total amount of duties paid in the country to which the good will be finally exported.

According to article 318, the duty deferral program includes measures such as those that govern foreign trade zones, temporary imports under bond, bonded warehouses, "maquiladoras", and inward processing programs.

Example

A Mexican importer (who may be a Mexican "maquiladora" or a company with a PITEX program) imports material parts from Germany to produce a paper-cutting machine which will later be exported to Canada. The importer is entitled to receive duty exemption or relief related to the amount of duties paid, whether for the materials imported into Mexico or for the machine imported into Canada, whichever is less.

In order to establish the amount of duties to be refunded, exempted, or reduced, in accordance with article 303(1) of NAFTA, satisfactory evidence is required of the duties paid in the country of final importation. Under article 318, any valid documentary proof establishing that duties have been paid under the laws of each country is sufficient for this purpose. In Mexico, the Regla General 8, which describes the relevant NAFTA provisions, states that, in addition to the terms of article 318, satisfactory evidence also means any declaration from the person filing for duty deferral, or in accordance with article 303, when this declaration is based on information from the importer who introduced the good to the country from which it was later exported.

This duty deferral program is scheduled to come into effect January 1, 2001, according to Annex 303.7 of NAFTA.

Operations currently exempted from duty are those listed in the *Ley Aduanera* (see Chapter 9), as temporary imports of goods to be manufactured, altered or repaired, which are exclusively for those companies subject to temporary admission programs for the production of goods for export (PITEX) and export maquiladoras regulated by article 84 of the *Ley Aduanera*.

The drawback program is also applicable to goods imported permanently into Mexico but later exported (see the *Diario Oficial de la Federación*, April 24, 1985, revised July 29, 1987).

In addition, the *Ley Aduanera* (articles 58-A and 58-B) enables importers to pay duties through a customs account and later obtain a refund upon proof of exportation of the goods.

After January 1, 2001, goods imported under NAFTA will be excluded from the provisions mentioned above.

Procedure for obtaining refunds

Taxpayers may obtain refunds of the above-mentioned amounts, by submitting requests to the special or local tax administration office corresponding to their official address. They must submit the following information:

- Form 32 with annexes properly completed (Annex 1);
- entry form, showing the total amount of duties paid during the first importation into a NAFTA country;
- documentary proof of exportation of the good to a second NAFTA Party;
- documentation showing payment of duties upon importation of the good from another NAFTA country; and
- ID papers establishing the legal status of the importer.

Once these documents have been put together, they must be deposited in the fiscal letter box of the above-mentioned office.

4. References

Diario Oficial de la Federación, dated December 20, 1993, covering the article 303 (1), (2) and (3) of NAFTA.

Rule 318 of the Decree enacting NAFTA.

Diario Oficial de la Federación, dated May 3, 1990, establishing provisions regarding the temporary importation of merchandise for the production of goods to be exported (PITEX).

Diario Oficial de la Federación, dated April 24, 1985, and July 29, 1987, establishing the drawback program for exporters.

Ley Aduanera, articles 58-A, 58-B, Cuenta Aduanera.

ADMINISTRACION LOCAL DE RECAUDACION

Se anotará el nombre de la Administración que corresponda al domicilio fiscal del contribuyente, o en su caso, se indicará el de la Administración Especial de Recaudación.

No es necesario adherir etiquetas con Código de Barras. En el espacio correspondiente se anotará el número del Registro Federal de Contribuyentes asignado por la Secretaría de Hacienda y Crédito Público.

PARTE 1

DATOS GENERALES DEL CONTRIBUYENTE

Se anotará el nombre completo o la denominación o razón social y domicilio fiscal, así como el giro o actividad preponderante, manifestado al Registro Federal de Contribuyentes. Cuando para anotar esta última información sea insuficiente el espacio, se podrá escribir de corrido, sin ajustarse a los recuadros del formulario.

PARTE 2

Como una facilidad administrativa, se ha incorporado el espacio para señalar el nombre de la institución de crédito (banco), número de cuenta, sucursal y localidad en donde ésta se localiza, para que en su oportunidad le sea depositado el importe de la devolución.

PARTE 3

TIPO DE CONTRIBUCION QUE SOLICITA

En los cuadros correspondientes se marcará con una "X" el tipo de contribución por la que se solicita la devolución.

Tratándose del I.V.A. se marcará la deducción elegida por el contribuyente para solicitar la devolución.

PARTE 4

ORIGEN DEL SALDO A FAVOR

Se deberá marcar con una "X" el recuadro que corresponda a la causa que dió origen al saldo a favor.

Cuando se obtuvo saldo a favor por base declarada en exceso (punto 3), se marcará con una "X" sólo cuando esta no sea consecuencia de deducciones no consideradas, ya que en éste caso se marcará el rubro correspondiente a ese motivo (punto 5).

Por "deducciones no consideradas" se entenderá las deducciones, gastos y compras, que se pudieron deducir y cuya deducción no se efectuó en la declaración normal.

PARTE 5

INFORMACION ESPECIFICA DEL TRAMITE

En el punto 4 se manifestará el saldo a favor derivado de la base declarada en exceso, cuando éste no sea consecuencia de las deducciones no consideradas en la declaración normal.

PARTE 6

DETERMINACION DEL SALDO A FAVOR DE I.V.A.

Cuando para registrar las cantidades relativas al I.V.A. sean insuficientes los recuadros, se podrá hacer la anotación de corrido, sin considerar un espacio para cada dígito.

EJEMPLO

I.V.A. TRASLADADO

ACTIVIDADES A LA TASA DEL 10%

3	4	2	6	8	2	1	7	0
---	---	---	---	---	---	---	---	---

NOTA:

EN ESTE INSTRUCTIVO SE OFRECEN AYUDAS ADICIONALES A LAS CONTENIDAS AL REVERSO DEL FORMULARIO.

COMO PUEDE REALIZARSE EL PAGO DE ADEUDOS FISCALES HASTA EN 36 PARCIALIDADES SUCESIVAS ?

QUE TIPO DE CONTRIBUCIONES SE PUEDEN PAGAR EN PARCIALIDADES ?

COMO SE REALIZA EL TRAMITE ?

A y B

C y D

A. Acogiéndose a más tardar el día 31 de diciembre de 1994, a la opción prevista en el Decreto que otorga facilidades administrativas en materia de Contribuciones Federales, publicado el 4 de octubre de 1993, en el Diario Oficial de la Federación.

B. Optando por las facilidades previstas en la Resolución que establece para 1994, Reglas de Carácter General aplicables a los impuestos y derechos federales, excepto los relacionados con el comercio exterior, publicada en el Diario Oficial de la Federación el 28 de marzo de 1994.

C. Solicitando autorización de acuerdo a la resolución que establece para 1994, Reglas Fiscales de Carácter Federal, relacionadas con el Comercio Exterior, publicada en el D.O.F. el 28 de marzo de 1994.

D. Solicitando autorización, con apoyo en lo dispuesto en el Art. 66 del Código Fiscal de la Federación.

De acuerdo a:

A. Todos los impuestos federales y sus accesorios a cargo del contribuyente, o los que tenga como retenedor. *

La opción se podrá ejercer una sola vez en cada año de calendario.

B. Comprende los adeudos a cargo del contribuyente, derivados de:

- Impuesto Sobre la Renta **
- Impuesto al Activo **
- Impuesto al Valor Agregado (Siempre que no se pague en aduanas) **

C. Las contribuciones adeudadas a cargo del contribuyente, derivadas de operaciones de importación o exportación. **

D. Comprende cualquier otro tipo de contribución que no puedan pagarse conforme a los puntos A, B o C. **

- Efectuando el pago de la primera parcialidad en el formulario anual de pago, o en su caso, en el Formato de Pago 1.

Tratándose de créditos requeridos, la autoridad fiscal proporcionará el formulario de pago de uso interno HFMP-1.

- Presentando un aviso mediante el formulario HAPP-1, dentro de los 10 días hábiles siguientes a la fecha de pago de la primera parcialidad.

Obteniendo la autorización para pagar contribuciones en parcialidades a través del formulario HCF-2.

* Con excepción de los que debieron haberse pagado en los tres meses anteriores al mes en que ejerza la opción.

** No podrán incluirse contribuciones que debieron pagarse en el año de calendario o en los últimos 6 meses de 1993.

8-8

HOJA DE HOJAS

[illegible]

PERIODO DE OPERACIONES: _____
MES AÑO MES AÑO

[illegible]

FIRMA DEL CONTRIBUYENTE O REPRESENTANTE LEGAL.

SE PRESENTA POR QUINTUPlicADO

1. En este anexo relacionará las operaciones efectuadas por el contribuyente con proveedores, arrendadores y prestadores de servicios, durante el periodo en el cual se generó el saldo a favor que solicita en devolución o aplica en compensación debiendo anotar primero todas las operaciones con proveedores, seguidas de las operaciones con arrendadores y por último las operaciones con prestadores de servicios.
2. Deberá anotar las operaciones cuyo impuesto acreditable, sumado en su caso al impuesto pagado por importaciones efectuadas en el mismo periodo, representen un 80% de la totalidad del impuesto acreditable que generó el saldo a favor.
3. Si durante el periodo de operaciones que relaciona, realizó dos o más operaciones con un mismo proveedor, arrendador o prestador de servicios, deberá agrupar dichas operaciones y presentarlas como una sola.
4. Anotará el tipo de operación(es) que relaciona, de acuerdo a lo siguiente: "1" si es proveedor, "2" si es arrendador y "3" si es prestador de servicios.
5. Anotará el mes y el año en que realizó la operación que relaciona. En caso de relacionar más de una operación en un renglón determinado, anotará la fecha en que realizó la última operación relacionada.
6. Anotará el número de operaciones que agrupe en cada renglón.
7. Anotará la clave del R.F.C. correspondiente al proveedor, arrendador o prestador de servicios que relaciona, la cual constará de 13 posiciones para personas físicas o 12 posiciones para personas morales, en este último caso dejará en blanco la primera posición.
8. Anotará el importe de la operación que sirvió de base del impuesto.
9. Anotará el importe del impuesto acreditable correspondiente a dicha(s) operación(es).
10. Utilizará tantas anexas como necesite, debiendo anotar en los recuadros "Hoja" el número de hoja que corresponda y "De Hojas" el total de hojas que presente de este anexo.
11. En el reverso de la última hoja que utilice de este anexo, anotará el importe de la suma del valor de la operación y de impuesto acreditable. En su caso, deberá anotar el total de impuesto pagado en importaciones, relacionado en el "Anexo 2".
12. Determinará el % de impuesto acreditable que relacionó, sumando el total de impuesto acreditable relacionado en este anexo más el correspondiente a importaciones, anotando el resultado en el recuadro "TOTAL IMPUESTO ACREDITABLE RELACIONADO". Divida esta cantidad entre el total de impuesto acreditable que generó el saldo a favor.



HOJA DE HOJAS

CLAVE DEL REGISTRO FEDERAL DE CONTRIBUYENTES

[illegible]

APELLIDO PATERNO, MATERNO Y NOMBRE(S) O DENOMINACION O RAZON SOCIAL:

PERIODO DE OPERACIONES: _____ MES _____ AÑO _____ MES _____ AÑO

[illegible]

FIRMA DEL CONTRIBUYENTE O REPRESENTANTE LEGAL.

SE PRESENTA POR QUINTUPlicado

ANEXO 3 RELACION DE IMPUESTO AL ACTIVO PAGADO EN EJERCICIOS ANTERIORES PARA EFECTOS DE DEVOLUCION DE CONFORMIDAD CON EL ARTICULO 9 DE LA LEY DEL IMPUESTO AL ACTIVO

CLAVE DEL REGISTRO FEDERAL DE CONTRIBUYENTES

HOLIA

DE HOJAS

APELLIDO PATERNO, MATERNO Y NOMBRE(S) O DENOMINACION O RAZON SOCIAL:

PERIODO DE OPERACIONES:

MES AÑO MES AÑO

[illegible]

DATOS INFORMATIVOS DE LA DECLARACION DEL EJERCICIO EN EL CUAL EL IMPUESTO SOBRE LA RENTA POR ACREDITAR EXCEDE AL IMPUESTO AL ACTIVO.

B) IMPUESTO SOBRE LA RENTA CAUSADO EN EL EJERCICIO

EJERCICIO FISCAL

MES AÑO MES AÑO

DA	MES	AÑO
----	-----	-----

C) IMPUESTO AL ACTIVO DEL EJERCICIO

FECHA DE PRESENTACION

NORMAL

D) IMPUESTO SOBRE LA RENTA POR ACREDITAR QUE EXCEDE AL IMPUESTO AL ACTIVO (B-C)

DECLARACION DEL EJERCICIO

COMPLEMENTARIA

FIRMA DEL CONTRIBUYENTE O REPRESENTANTE LEGAL

SE PRESENTA POR QUINTUPlicado

INSTRUCCIONES DE LLENADO (ANEXO 3)

SE ANOTARA POR EJERCICIO FISCAL POR EL QUE SOLICITA DEVOLUCION DEL IMPUESTO AL ACTIVO EFECTIVAMENTE PAGADO, LA INFORMACION QUE SE LE INDICA DE ACUERDO A:

1. EN LA COLUMNA DE EJERCICIO FISCAL, ANOTARA EL MES Y AÑO INICIAL Y FINAL DEL EJERCICIO POR EL CUAL PAGO EL IMPUESTO AL ACTIVO QUE SOLICITA EN DEVOLUCION.
2. EN LA COLUMNA "TIPO DE DECLARACION", ANOTARA SI ES NORMAL O COMPLEMENTARIA LA DECLARACION EN LA QUE PAGO EL IMPUESTO AL ACTIVO QUE SOLICITA EN DEVOLUCION.
3. EN LA COLUMNA "FECHA DE PRESENTACION", ANOTARA EL DIA, MES Y AÑO EN LOS CUALES PRESENTO LA DECLARACION NORMAL O COMPLEMENTARIA EN SU CASO, EN LA QUE PAGO EL IMPUESTO AL ACTIVO QUE SOLICITA EN DEVOLUCION.
4. EN LA COLUMNA "HISTORICO", ASENTARA EL IMPORTE DEL IMPUESTO AL ACTIVO EFECTIVAMENTE PAGADO, MANIFESTADO EN LA DECLARACION A LA QUE HACE REFERENCIA, SIN INCLUIR EL QUE HAYA SIDO CUBIERTO A TRAVES DEL ACREDITAMIENTO DEL I.S.R. CAUSADO EN EL MISMO EJERCICIO.
5. EN LA COLUMNA "ACTUALIZADO", ES PARA USO EXCLUSIVO DE LA AUTORIDAD HACENDARIA.
6. EN LA COLUMNA "QUE SOLICITA EN DEVOLUCION", ANOTARA EL IMPORTE QUE DEL IMPUESTO AL ACTIVO EFECTIVAMENTE PAGADO, ESTA SOLICITANDO EN ESTA FORMA FISCAL SU DEVOLUCION. EN EL CASO EN QUE EL IMPORTE DEL IMPUESTO SOBRE LA RENTA POR ACREDITAR, QUE EXCEDA AL IMPUESTO AL ACTIVO (RENGLON "C"), NO LE PERMITA RECUPERAR LA TOTALIDAD DEL IMPUESTO AL ACTIVO EFECTIVAMENTE PAGADO EN ALGUNO DE LOS EJERCICIOS POR LOS QUE SOLICITA LA DEVOLUCION, EN ESTA COLUMNA ANOTARA UNICAMENTE LA CANTIDAD QUE SI PUEDE RECUPERAR EN ESTA SOLICITUD.
7. EN EL RENGLO "TOTALES", ANOTARA EL RESULTADO DE SUMAR LOS IMPORTES MANIFESTADOS EN CADA UNO DE LOS RENGLOES CORRESPONDIENTES A UNA MISMA COLUMNA.

EN LA SECCION "DATOS INFORMATIVOS DE LA DECLARACION EN LA CUAL EL IMPUESTO SOBRE LA RENTA POR ACREDITAR EXCEDE AL IMPUESTO AL ACTIVO", ANOTARA LA INFORMACION COMO A CONTINUACION SE DETALLA:

- 1) EN EL RENGLO "B" IMPUESTO SOBRE LA RENTA CAUSADO EN EL EJERCICIO, ANOTARA EL IMPORTE DEL IMPUESTO SOBRE LA RENTA QUE LE HAYA CORRESPONDIDO EN EL EJERCICIO, EN LOS TERMINOS DEL ARTICULO 10-A O 141 DE LA LEY DEL IMPUESTO SOBRE LA RENTA, POR EL EJERCICIO EN EL CUAL ESTE IMPUESTO EXCEDIO AL IMPUESTO AL ACTIVO CAUSADO.
- 2) EN EL RENGLO "C" IMPUESTO AL ACTIVO CAUSADO EN EL EJERCICIO, ANOTARA EL IMPORTE DEL IMPUESTO AL ACTIVO QUE LE CORRESPONDIO EN EL EJERCICIO AL QUE HACE REFERENCIA EL PARRAFO ANTERIOR.
- 3) EN EL RENGLO "D" IMPUESTO SOBRE LA RENTA POR ACREDITAR QUE EXCEDE AL IMPUESTO AL ACTIVO, ANOTARA EL RESULTADO DE DISMINUIR EL IMPORTE DEL RENGLO "C" AL DEL RENGLO "B". LA CANTIDAD ASENTADA EN ESTE RENGLO SERA EL IMPORTE MAXIMO HASTA POR EL CUAL PUEDE SOLICITAR LA DEVOLUCION DEL IMPUESTO AL ACTIVO EFECTIVAMENTE PAGADO EN EJERCICIOS ANTERIORES.
- 4) ANOTARA EL EJERCICIO FISCAL, FECHA DE PRESENTACION Y TIPO CORRESPONDIENTES A LA DECLARACION DEL EJERCICIO EN EL CUAL EL IMPUESTO SOBRE LA RENTA POR ACREDITAR EXCEDIO AL IMPUESTO AL ACTIVO CAUSADO EN EL MISMO EJERCICIO.
- 5) ESTE ANEXO DEBEBA ESTAR FIRMADO POR EL CONTRIBUYENTE O EN SU CASO, POR EL REPRESENTANTE LEGAL.

DOCUMENTACION QUE DEBE ACOMPAÑAR A LA FORMA FISCAL 32 PARA DEVOLUCIONES

(original y dos copias fotostaticas)		TIPO DE CONTRIBUCION QUE SOLICITA								
		1.	2.	3.	4.	5.	6.	7.	8.	9.
1	Declaración con sello original donde manifieste el saldo a favor que solicita o comprobante de pago electrónico. En caso de ser complementaria, declaraciones normal y/o complementaria (s) anterior (es)	X	X		X	X	X		X	X
2	Si se devoluciona del ejercicio, pagos provisionales normales y/o complementarios correspondientes a dicho ejercicio por el que solicita o comprobantes de pago electrónico.	X	X		X	X	X	X		
3	Declaración (es) con sello original normal y/o complementaria (s) en su caso, de donde se deriva el I.A. a recuperar o comprobante de pago electrónico.							X		
4	Declaración con sello original donde manifieste el I.S.R. del ejercicio, cuyo importe es mayor al I.A. correspondiente al mismo ejercicio.							X		
5	En caso de haber solicitado con anterioridad, parte del I.A. a recuperar, deberá anexar fotocopia de la resolución autorizada de dicho importe.							X		
6	Papeles de trabajo donde se muestre el origen del importe que solicita en devolución y/o manifestación escrita en la que exponga claramente la motivación de su solicitud.				X					X
7	Declaración de Contador Público Registrado en los términos del Art. 15-A del Reglamento de la Ley del Impuesto al Valor Agregado.	X		X						
8	Comprobantes del impuesto acreditable: Constancias de retenciones, comprobantes de pago (con sello original y/o firma autógrafa), estados de cuenta bancarios, etc.					X				X
9	Solo en caso de Liberación de créditos, la resolución administrativa o judicial.	X	X		X	X	X	X	X	X
10	Para empresas Alamente Exportadoras, relación de operaciones de exportación				X					
11	Constancia de SECOFI que acredite su registro como empresa Alamente exportadoras	X			X					
12	Anexo 1 Relación de Proveedores, Arrendadores y Prestadores de Servicios.		X							
13	Anexo 2 Relación de operaciones de comercio exterior.		X							
14	Anexo 3 Relación del impuesto al activo pagado en ejercicios anteriores							X		



IMPRESOR AUTORIZADO POR LA SHCP PARA IMPRIMIR FORMAS FISCALES # 322-A-B1111 AUT. G50001

GENERALES

1. Esta forma será llenada a máquina o con letra de molde, con bolígrafo a tinta negra o azul, y las cifras no deberán invadir los límites de los recuadros.

En caso de que esta sea llenada a mano, utilice números y letras mayúsculas como las siguientes:

0	1	2	3	4	5	6	7	8	9
A	B	C	D	E	F	G	H	I	J
K	L	M	N	O	P	Q	R	S	T
U	V	W	X	Y	Z				

2. El contribuyente deberá anotar su apellido paterno, materno y nombre(s) o denominación o razón social y la clave de registro federal de contribuyente a doce o trece posiciones según corresponda.
3. Esta forma será llenada en Nuevos Pasos redondeados sin centavos, el monto se redondeará para que las cantidades de 1 a 50 centavos se ajusten a la unidad del peso inmediata anterior y las cantidades de 51 a 99 centavos se ajusten a la unidad del peso inmediata superior.
Ej: 1) 150.50 = 150
2) 150.51 = 151
4. Esta forma se presentará a través de Buzón Fiscal, ubicados en los Módulos de Atención Fiscal de la Administración Local de Recaudación correspondientes al domicilio fiscal del contribuyente, o en su caso, en la Administración Especial de Recaudación.
5. Se presentará una forma de solicitud de devolución por cada:
* Ejercicio o período a devolver.
* Tipo de contribución.
* Para I.A. a recuperar, pagado en ejercicios anteriores se podrá realizar el trámite utilizando una sola forma, independientemente de los ejercicios que solicite.
6. Para agilizar la devolución se deberá anotar el nombre de la Institución Bancaria, Localidad, número de sucursal y de la cuenta, en la que se depositará el importe de la devolución.

7. Las personas morales y físicas cuando corresponda, que presenten una promoción por primera vez, deberán anexar además de la documentación requerida para cada tipo de solicitud de devolución, original y dos copias fotostáticas del testimonio del acta constitutiva y poder notarial que acredite la personalidad del representante legal que, promueve en su caso.

8. Cuando se designe otro representante legal, deberá anexar original y dos copias fotostáticas del poder notarial que acredite su nombramiento.

ESPECÍFICAS

- A) En el renglón 3 del recuadro 5, cuando la base declarada en exceso sea consecuencia de deducciones que pudiendo efectuarse no se hicieron en la declaración normal, no se marcará este renglón, ya que debe señalarse con "X" el renglón 5 de este mismo recuadro.
- B) En el recuadro 6, cuando se trate de otra tasa diferente a las ya mencionadas, anotará la que corresponde en el renglón 4.
- C) Cuando solicite devolución de saldos a favor de I.V.A. del ejercicio, en recuadro 6, renglón 9, el importe que deberá anotar será el que resulte una vez disminuidas las devoluciones y/o compensaciones efectuadas en el ejercicio.
- D) "IMPORTE DEL REMANENTE DE COMPENSACIONES ANTERIORES", anotará el importe del remanente del Saldo a Favor de la última compensación, actualizado a la fecha de la misma.
- E) En caso de que solicite devolución de I.A. a recuperar de ejercicios anteriores:
* En el recuadro no. 4, en los renglones 1, 2 y 3, anotará la información relativa a la declaración en la cual el I.S.R. del ejercicio es mayor al I.A. del mismo ejercicio.
* En el recuadro 4, renglón 6, anotará la cantidad que solicita en devolución.

NOTA:

La relación de la documentación que se debe acompañar con esta forma se indica al reverso del Anexo 3.

(PARA USO EXCLUSIVO DE LA AUTORIDAD)

RESOLUCIÓN

No. de Resolución: 00000000

Fecha de Resolución: 00 00 00

La Administración

Cargo del Funcionario Autorizado

LA PRESENTE SE EMITE DE ACUERDO A LOS DATOS APORTADOS POR EL CONTRIBUYENTE
SIN PREJUDICIAR DE SU VERACIDAD Y DEJANDO A SALVO LAS FACULTADES DE REVISIÓN DE ESTA
SECRETARÍA.

NOMBRE Y FIRMA DEL FUNCIONARIO AUTORIZADO



IMPRESOR AUTORIZADO POR LA SHCP PARA IMPRIMIR FORMAS RSCALES # 322-A-8-1111 AUT. G50001



Chapter 9: Temporary Admission

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Chapter 9: Temporary Admission

1. Introduction

This chapter explains in a clear and precise manner the applicable rules under NAFTA which permit the temporary admission of goods into Mexico for use and exhibition and subsequent return abroad. The rules also permit the temporary admission of materials, machines, and equipment required for the production, transformation, or repair of goods and their subsequent return abroad.

2. Purpose

This chapter informs foreign traders of cases in which NAFTA and Mexican laws allow them to import goods without paying duties.

3. Procedures

3.1 NAFTA provisions on temporary admission

According to NAFTA, participating countries must allow the following goods to enter duty-free:

Professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for "the temporary entry of business persons", under Chapter 16 of NAFTA.

The Diario Oficial de la Federación, dated March 28, 1994, Reglamento general 93, Artículo 75(I)(b)(1), states: "under article 75(I)(b)(1) of the *Ley Aduanera* residents of a foreign country are entitled to temporary importation of goods, other than vehicles, for a 6 month period, as long as such persons are not permanent residents of Mexico, and satisfy the following requirements in accordance with the *Ley sobre Importación de Mercancías*":

- the entry document for the goods shall indicate the name of the foreign resident as well as the name of a Mexican resident. A letter from the Mexican resident should be attached in which that person, under article 26 of the Código Fiscal de la Federación, accepts responsibility for the duties resulting from the failure to return the relevant goods to their country of origin before the established date;

- there must be a business relationship between the foreign resident and those who will use the imported goods, except if such goods are to be used by the importers themselves;
- before submitting the entry, the foreign residents or their representatives must notify the Administración Local de Auditoría Fiscal which corresponds to the area in which the goods are to be used.

When importers satisfy the requirements set out in Chapter 16 of NAFTA, "Temporary entry of business persons", they will be allowed to import the necessary equipment to carry out their activities, even when such equipment is mounted on their vehicles.

Press equipment or radio and television equipment for broadcasting, and film-making equipment.

The Diario Oficial de la Federación, dated March 28, 1994, Regla General 95, Artículo 75(I)(b), states: "foreign residents carrying out journalism activities for newspapers, radio, or television, may temporarily import the necessary equipment for the exercise of their profession, as long as they substantiate this through a written statement issued by a Mexican Consul which indicates the name of the media they are representing. In this case, the services of a customs agent are not necessary".

Film-making equipment and accessories may be imported for a twelve month period which may be extended for one year, provided the importation is carried out by a foreign resident.

Goods imported for sports events or for display or demonstration

Article 75(I)(c) allows temporary importation for sports purposes, in the case of events sponsored by national or foreign government agencies, or universities and private organizations legally authorized to receive deductible donations in accordance with the *Ley del Impuesto sobre la Renta*.

Under *Ley Aduanera*, article 75(I)(b), foreign athletes may temporarily import their equipment. When they are passengers, such persons may import their sports gear as baggage free of duties, as provided in the Diario Oficial de la Federación, as of March 28, 1994, Regla General 40, art. 46(VI).

Commercial samples and advertising films. The relevant provisions for importation of commercial samples are established under article 75(I)(b)(4) (samples and show cases only). Advertising films can be imported under NAFTA.

The provisions stated in the *Ley Aduanera*, art. 75 do not contradict article 305(2) and (3) of NAFTA with respect to requirements which temporarily imported goods must meet.

Article 305(5) of NAFTA covers containers and vehicles used for the international transport of goods entering Mexican territory.

As provided in the *Ley Aduanera* art. 46(III) and la Regla General 49, published in the Diario Oficial de la Federación on March 28, 1994, vehicles carrying out international cargo transport services may travel unrestricted within a 20 km strip parallel to the international border inside national territory, regardless of the nationality of the driver.

As stated in the Diario Oficial de la Federación, dated March 28, 1994, Regla General 51, foreign vehicles transporting international passengers may be temporarily imported when the following requirements are met:

- the passengers are foreign residents, not permanently established in Mexico;
- the persons responsible are owners or leasers of the vehicles transporting international passengers;
- the transportation vehicles exhibit solely the business name, logo, or initials of the company;
- the vehicle has been authorized to enter the country by the Secretaría de Comunicaciones y Transportes; and
- a security deposit made out to the Tesorería de la Federación for the full value of the vehicle has been posted.

In addition, in the Diario Oficial de la Federación, dated March 28, 1994, Regla General 96 states: "According to the *Ley Aduanera*, art. 75(I)(a), the temporary importation of freight trailers carrying imported goods will be permitted for more than one month when such trailers are imported by rail under the internal transit system. In this event, they must be exported using the same method and may remain in the national territory until their exportation is possible".

Trailers imported under this provision may only travel between the railroad station and the place of delivery of the imported goods and vice versa and, when returning to their country of origin, directly from the place of delivery of the imported goods to the customs house by which they are to leave the country.

In addition, the Regla General 104 states: "vehicles which belong to foreign residents are permitted to travel within a 20 km strip parallel to the international border inside the national territory, and in the free transit border areas, as long as foreign resident is aboard".

4. Temporary admissions under the *Ley Aduanera*

In accordance with the *Ley Aduanera*, article 75, there are two types of temporary admissions:

Imported goods to be exported in the same condition

The temporary importation of goods to be returned in the same condition as when imported are covered under article 75 of the *Ley Aduanera*. The maximum period which such imports may remain in national territory is as follows:

- For up to one month:
 - freight trailers, when they are carrying the imported goods which entered the national territory aboard such vehicles (article 75(I)(a)).
- For up to 6 months, according to article 75(I)(b) of the *Ley Aduanera*:
 - importations made by foreign residents, when such persons or other related business persons are the only users of the imported goods, not including vehicles;
 - containers for goods provided they hold the imported goods brought into national territory;
 - goods imported by persons who are strictly exporters, when such goods are used by national residents; and
 - samples and display accessories intended to exhibit the goods.
- For up to 12 months, according to article 75(I)(c) of the *Ley Aduanera*:
 - goods imported for conventions;
 - temporary imports for sporting or cultural events sponsored by national or foreign government agencies, universities and private sector organizations legally authorized to receive deductible donations in accordance with the *Ley del Impuesto Sobre la Renta*;
 - film-making equipment and accessories, provided they are imported by a foreign resident; and
 - test vehicles, when they are imported by an authorized manufacturer residing in Mexico.
- For the period during which their immigration status is in effect (article 75(I)(d)), regarding moves in vehicles and changes in lodgings, and for local and important visitors, tourists, foreign residents, students and leasers, when such vehicles belong to the above-mentioned persons, except when they belong to local visitors and tourists.

- For up to 20 years, according to article 75(I)(e), in the following cases:
 - containers;
 - aircraft and helicopters to be used by authorized airlines in Mexico, as well as those intended for the public transportation of passengers. In the latter case, the companies shall submit, annually, in February, the information requested by the Secretaría de Hacienda y Crédito Público, using magnetic systems, according to the Regla General;
 - vessels authorized by the Secretaría de Hacienda y Crédito Público, according to the Regla General.

Goods exported after undergoing a manufacturing, alteration or repair process

- Goods may be temporarily imported for re-export after undergoing manufacturing, alteration or repair.
 - according to article 84 of the *Ley Aduanera*, only companies with a temporary importation program (maquilador) or temporary admission program for the production of goods for export (PITEX) are entitled to import on a temporary basis.
 - in addition, the above-mentioned companies may import merchandise necessary for the manufacturing process such as raw materials, lubricants, combustion oils, etc. They may also import the relevant equipment used in the production of the good, such as machinery, tools and equipment, etc.
- Temporary imports:
 - do not pay foreign trade duties; and
 - must satisfy the non-tariff regulations and constraints established for this purpose.
- Under NAFTA, Annex 304.2(c), Mexico is permitted to continue these duty relief programs subject to a performance requirement until 2001.
 - the temporary imports by the "maquiladora" industry and PITEX companies are carried out using the following entry codes:
 - for materials: an entry form A2.
 - for assets: an entry form A6.
 - for the return of manufactured goods: an entry form J2.
 - for the return of assets: an entry form B0.
 - all types of temporary imports intended for manufacturing, repairs or alterations will be allowed until 2001.

5. Additional information

The alteration, manufacturing and repair processes can be accomplished under the Mexican customs program in customs precincts, for those national or foreign goods which are to be altered, manufactured or repaired, and later returned to their country of origin or exported.

Consequently, under this Mexican customs program, companies established for the manufacturing of finished goods to be exported, are entitled to be located within these fiscal precincts.

Regarding the national automotive industry, it is entitled to the fiscal deposit regime in its assembly plants for production for export or domestic purposes.

When the imported goods remain in Mexico due to damage or destruction, the importer must request authorization from the pertinent customs office (Administración Local o Especial de Auditoría Fiscal Federal), which in turn will verify the destruction of the goods.

6. References

North American Free Trade Agreement (article 305).

Ley Aduanera

Reglas Fiscales de Carácter General para el Comercio Exterior.

Chapter 10: Repairs and Alterations

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Chapter 10: Repairs and Alterations

1. Introduction

International trade sometimes requires that goods be sent to another country for manufacturing, repair, or alteration. Under NAFTA, the Parties can export goods with exemption of duties, for these purposes, to the territory of the other participating countries.

2. Purpose

This chapter outlines the customs procedures and provisions relative to the import and export of goods requiring repairs or alterations, as well as the procedures and consequences to which they are subject according to the legal regulations, in the territories of the NAFTA Parties.

3. Procedure

3.1 Goods exported to be repaired in Canada or the U.S

Requirements for the export of goods from Mexico, to Canada or the U.S. for repairs or alterations. Officials must:

- apply the relevant tariff classification for the goods according to the Impuesto General de Exportación;
- use the customs code "BM";
- use the services of a customs broker or agent; and
- permit the temporary exports duty-free.

Any good exported temporarily and repaired in the territory of any one of the NAFTA Parties, shall be returned to Mexico free of duty regardless of the origin of the good or in case of repairs which could have been made in Mexico, except for those goods indicated under NAFTA (Annex 307.1(d)), which covers vessels.

Once the goods have been repaired or altered, officials must take the following action when the goods are returned to Mexico:

- apply the relevant tariff classification in accordance with the *Ley del Impuesto General de Importación*;
- use the services of a customs broker or agent;
- use the customs code "I1";
- omit the payment of import duties;
- omit the presentation of a certificate of origin; and
- when goods are returned by companies with temporary import programs for the production of goods to be exported (PITEX), or authorized maquila programs, they must use the entry code "B0".

These provisions also apply to goods repaired free under warranty.

3.2 Provisions related to the goods listed in section D of Annex 308.1 (Vessels)

As provided in NAFTA, article 307, Annex 307.1, Section B, and according to article 93 of the *Ley Aduanera*, Mexico is bound to apply the duties established in Section D, Annex 308.1 of NAFTA, regardless of the origin of the goods returned to its territory after being exported to the territory of one of the NAFTA countries for repairs or alterations.

Calculating the general importation duty

When estimating the importation duty for goods covered by the Annex 308.1(d) of NAFTA, the full cost of repair is to be considered, namely, the parts and labour used for such purposes, as well as applying the tariff rate that would have corresponded to the incorporated parts as if they had been classified under Mexican duty category "B", Annex 302.2.

3.3 Goods imported into Mexico for repairs and alterations

The temporary import of goods into Mexico for repairs or alterations must be carried out by a company with a temporary import program for the production of goods to be exported or maquila for exportation authorized by the Secretaría de Comercio y Fomento Industrial.

- in this event the importation of goods is duty-free.
- the services of a customs broker or agent must be retained.
- an A2 entry form must be used.
- the goods must be returned using a "J2" customs code.

Chapter 11: Miscellaneous

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The repair or alteration of goods can be made by a qualified company established in a bonded precinct according to the Régimen de elaboración, transformación o reparación en recinto fiscalizado. In this case:

- no import duties are to be paid; and
- the services of a customs broker or agent must be retained.

Goods returned to Mexico for repairs

- once the final export from Mexico to one of the NAFTA Parties has been completed and such goods are returned to Mexico due to a failure of the goods to comply with the agreed specifications or defective parts, the subsequent importation shall be duty-free according to the *Ley Aduanera*, article 74. In this case:
 - the entry form code "K1" will be used;
 - the services of a customs broker or agent will be used;
 - the maximum period for the goods to stay abroad will be one year;
 - no alterations or transformations should have been made outside the Mexican territory; and
 - no special authorization will be required, according to the Regla Fiscal General 90.

4. References

Ley Aduanera.

North America Free Trade Agreement (articles 306 and 307).

Reglas Fiscales de Carácter General para el Comercio Exterior.

Chapter 11: Miscellaneous

1. Commercial samples

1.1 Definition

Commercial samples are defined as goods imported to solicit orders for goods or services supplied from one of the NAFTA countries, and not for sale or lease.

1.2 Classification

Valued commercial samples

- To be returned in the same condition as imported - Goods intended for demonstration or exhibit, including components, accessories, and complementary devices that must be identified during exportation.
- Goods intended for manufacturing, alterations or repairs - Those goods imported for demonstration or to determine processing conditions, imported only in reasonable quantities according to the purpose of importation.

Commercial samples of negligible value

- They should have a negligible value, namely, they cannot be worth more than US \$1 (one United States dollar) or the equivalent in Mexican or Canadian currency, or should be marked, torn or otherwise rendered useless. The attachment of seals or labels shall not be considered sufficient to render the good useless.
- The entry of printed advertisement materials, according to the provisions of Chapter 49 of the Harmonized System, can be accomplished duty-free when the packages of such materials contain only a single sample of the material and are not part of larger consignments. The qualifying materials are: pamphlets, flyers, leaflets, brochures, trade catalogues, and tourist promotional posters, intended to promote, publish, or advertise a good or service provided free of charge.

1.3 Procedures

When importing valued commercial samples to be returned in the same condition as imported, the following should be considered:

- whether the good originates in a NAFTA country;
- whether the requirement for a certificate of origin should be waived;
- posting of a refundable bond or warranty deposit at the time of exportation of the good (not required if the good is originating);
- the duration of time for the goods to remain must be reasonable according to the purpose of importation; and
- the point of entry and exit of the good.

When importing valued commercial samples to be repaired, manufactured, or altered, the following should be considered:

- destruction, nationalization or return of the final product obtained from the imported good;
- whether the good originates in a NAFTA country;
- the presentation or non-presentation of a certificate of origin must be assessed;
- posting a refundable bond or warranty deposit during nationalization, destruction or exportation of the final product obtained from the imported good (not required if the good is originating); and
- the duration of time for the good to remain must be reasonable according to the purpose of importation.

When importing commercial goods of negligible value, either returned abroad or not, the following should be considered:

- the authorized import quota; and
- full demonstration before the relevant authority regarding the destination and quota of the imported material.

Example

Valued commercial samples to be exported in the same condition as imported: exhibit machinery or equipment for fairs, exhibitions and conventions.

Valued commercial samples intended for manufacturing, alteration or repairs:

- steel intended to determine performing conditions in molding works (manufacturing);
- a substance with a certain degree of purity used to obtain a final product, in order to determine whether such a substance is useful or not in that process (alteration);
- a U.S. company "X" is interested in exporting electric motors to Mexico for repairs. Company "Y" in Mexico imports five powered motors for repairs so that the U.S. company can evaluate the quality of such repairs (repairs).

2. Confidentiality

Under article 507 of the NAFTA, the Secretaría de Hacienda y Crédito Público, may only provide confidential information obtained from a Mexican importer or another NAFTA producer or exporter to the authorized government officials responsible for the enforcement of resolutions concerning origin determination, customs matters, or income.

In addition, to comply with the Código Fiscal de la Federación, all information obtained from taxpayers, third parties related to taxpayers, and during the exercise of inspection activities, will be treated as strictly confidential, except when this information is submitted to judicial authorities for criminal prosecution.

The Secretaría de Hacienda y Crédito Público is bound to honor the confidentiality of information obtained from taxpayers and prevent it from becoming public, and consequently harmful to other related third parties.

3. Accounting books and records

Article 505 of NAFTA requires the producer or exporter who completed a certificate of origin to maintain the accounting records concerning the origin of a good. A Mexican importer who has introduced goods into Mexico under preferential tariff treatment is also requested to keep the relevant records for five years. However, to comply with the Código Fiscal de la Federación, accounting books should be kept for 10 years after presentation of the relevant entries.

The ten year period will take effect for the producer or exporter upon signature of the certificate of origin, and for the importer, after the date of importation.

Accounting records include purchases, costs, value, and payment for the materials used in the production, as well as those related to the production process. Any books and documents containing income records, expenditures, costs, assets and liabilities, and financial statements, including its receipts, elaborated according to the Generally Accepted Accounting Rules in the country of location, are also considered to be accounting records. In addition, in Mexico, publications of the Instituto Mexicano de Contadores Públicos, A.C. (IMCP), including additional brochures and its relevant updatings, are considered to be accounting records.

Importers must keep a copy of the certificate of origin, import entry, and invoice covering the good.

4. Rule 8a

Rule 8a is one of the most important of the schedule to the *General Import Duties Act*, and allows companies under the Harmonized System, to be included under a special increment program authorized by SECOFI, in order to complete the importation, through several consignments and using different entry points, of finished or semi-manufactured goods even when the requirements for importation are not met.

In addition, the importation of component parts or assemblies for manufacturing is allowed according to the corresponding tariff number. This rule also covers the importation of disassembled merchandise corresponding to whole or finished goods.

Those goods imported under Rule 8a must comply strictly with the increment program requirements, extend an industrial plant, replace equipment, or integrate manufactured or assembled merchandise.

5. Intellectual property rights

In signing NAFTA, Mexico is conveying its intention to participate in a new era, characterized by economic liberalization, with the goal of integrating into a new international sphere. In this respect, Mexico is currently undergoing a rapid transformation which includes some legal reforms. Intellectual property rights have played an important role in legal reform in Mexico.

The most important reason behind Mexico's amendment of its laws on intellectual property matters is its interest in importing technology. It is well known that some countries, including the United States and Canada, are creators and innovators in the field of technology, and generally are also producers and exporters of goods which require intellectual property protection, such as, software, films, books, and recordings. Mexico, on the other hand, is primarily an importer of such goods. Mexico should therefore harmonize its law to align it with that of the other NAFTA Parties, in order to grant judicial security to North American nationals, as well as to promote foreign investment and technology transfer.

However, there are some obstacles to harmonizing intellectual property legislation among NAFTA countries. In the United States and Canada, the relevant legislation includes copyright, trademarks, patents, and other rights, as a whole. In Mexico, intellectual property rights legislation includes only copyright, and classifies patents, trademarks, and other rights as industrial property rights. In short, there are two types of legislation in this area in Mexico: the *Ley federal de Derechos de Autor* and the recently amended *Ley de Propiedad Industrial*.

In spite of the intention of the NAFTA countries to standardize their intellectual property legislation by establishing well-defined, standard regulations for North America, it has been difficult to achieve this goal because the intellectual property (copyright) law in Mexico is composed of a high cultural content with diverse legal differences from its North American partners. Therefore, Mexico is concentrating on amending national intellectual property rights.

The role of the Secretaría de Hacienda y Crédito Público in relation to intellectual property rights is established in article 1718 of NAFTA. This outlines the responsibility of each of the Parties to adopt procedures that entitle people to request protection, by means of a written request to the competent authority, when they suspect that imports of counterfeit or copied merchandise, with a given trademark or copyright, are taking place, and asking administrative or judicial authorities to halt the circulation of such merchandise.

It should be mentioned that the United States customs authorities are entitled to carry out the suspension referred to in article 1718 of NAFTA. They may also issue rulings that completely resolve intellectual property cases.

However, in Mexico, customs authorities do not have this power. The Instituto Mexicano de la Propiedad Industrial and the Dirección General de Derechos de Autor are the competent authorities in industrial and intellectual property matters. Consequently, in order to implement article 1718 of NAFTA, Mexico will have to modify its customs legislation in order to authorize customs authorities to suspend the free circulation of goods which infringe industrial or intellectual property rights if detected in the customs precinct.

6. Additional Information

Further information regarding the contents of this text can be obtained from the Secretaría de Hacienda y Crédito Público, by calling the following branches:

Centro Nacional de Consultas: Telephone 227-0297 (60 lines available)

Dirección General de Política de Ingresos y Asuntos Fiscales Internacionales:
Telephone 228-2727 to 33

Administración General de Aduanas: Telephone 228-3387 and 88.

